



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY
साप्ताहिक
WEEKLY

सं. 43] नई दिल्ली, अक्टूबर 19—अक्टूबर 25, 2014, शनिवार/आश्विन 27—कार्तिक 3, 1936
No. 43] NEW DELHI, OCTOBER 19—OCTOBER 25, 2014, SATURDAY/ASVINA 27—KARTIKA 3, 1936

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 13 अक्टूबर, 2014

का.आ. 2758.—दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946, (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार केरल राज्य सरकार गृह (एम) विभाग, तिरुवनंतपुरम की सहमति से दिनांक 26 अप्रैल, 2014 की अधिसूचना जी.ओ. (एमएस.) सं. 80/2014/गृह के तहत केन्द्रीय अन्वेषण ब्यूरो की ई-मेल आईडी का प्रयोग करते हुए केरल निवासी श्री सदानंदन के साथ धोखाधड़ी से जुड़े अपराधों के संबंध में मामला दर्ज करने एवं अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों एवं न्यायाधिकार क्षेत्र का विस्तार संपूर्ण केरल राज्य पर करती है।

[फा. सं. 228/23/2014-एवीडी-II]

राजीव जैन, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC
GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 13th October, 2014

S.O. 2758.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Kerala, Home (M) Department, Thiruvananthapuram vide Notification G. O. (Ms.) No. 80/2014/Home dated 26 April, 2014, hereby extends the powers and Jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Kerala to register a case and to investigate the offences involved in the cheating of Sh. Sadanandan, a resident of Kerala, using the e-mail ID of the Central Bureau of Investigation.

[F.No. 228/23/2014-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 13 अक्टूबर, 2014

का.आ. 2759.—केन्द्र सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए इम्फाल स्थित मणिपुर उच्च न्यायालय में दिल्ली विशेष पुलिस स्थापना (के.अ. ब्यूरो) द्वारा जांच किए जा रहे मामलों अथवा उनसे उत्पन्न अन्य मामलों के अभियोजन, अपीलें एवं पुनरीक्षणों के संचालन के लिए श्री केईसम प्रदीप सिंह, अधिवक्ता को दिल्ली विशेष पुलिस स्थापना (केन्द्रीय अन्वेषण ब्यूरो) की ओर से विशेष लोक अभियोजक नियुक्त करती है।

[फा. सं. 225/26/2014-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 13th October, 2014

S.O. 2759.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Keisam Pradeep Singh, Advocate as Special Public Prosecutor of the Delhi Special Police Establishment (Central Bureau of Investigation) in the Manipur High Court at Imphal for conducting the prosecution, appeals, revisions or other matters arising out of the cases investigated by the Delhi Special Police Establishment (CBI).

[F.No. 225/26/2014-AVD-III]

RAJIV JAIN, Under Secy.

नई दिल्ली, 14 अक्टूबर, 2014

का.आ. 2760.—दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946, (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार केरल राज्य सरकार गृह (एम) विभाग, तिरुवनंतपुरम की सहमति से दिनांक 26 जून, 2014 की अधिसूचना जी.ओ. (एमएस.) सं. 129/2014 गृह द्वारा भारतीय दंड संहिता की धारा 465, 468, 417, 471, 419 एवं 201 एवं पासपोर्ट अधिनियम, 1967 (1967 का अधिनियम सं. 15) की धारा 12 की उप-धारा 1 के खंड (ख) एवं (घ) के अधीन पालारीवात्तम, पुलिस स्टेशन, पुर्नाकुलम में पंजीकृत अपराध सं. 2228/2011 में शामिल अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों एवं न्यायाधिकार क्षेत्र का विस्तार संपूर्ण केरल राज्य पर करती है।

[फा. सं. 228/49/2014-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 14th October, 2014

S.O. 2760.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Kerala, Home (M) Department, Thiruvananthapuram vide Notification G.O. (Ms.) No. 129/2014/ Home dated 26th June, 2014, hereby extends the

powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Kerala to investigate the offences involved in Crime No. 2228/2011, registered under sections 465, 468, 417, 471, 419 and 201 of the Indian Penal Code, 1860 (Act No. 45 of 1860) and clauses (b) and (d) of sub-section (1) of Section 12 of the Passport Act, 1967 (Act No. 15 of 1967), at Palarivattom Police Station, Ernakulam.

[F.No. 228/49/2014-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 15 अक्टूबर, 2014

का.आ. 2761.—दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946, (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार मध्य प्रदेश राज्य सरकार, गृह विभाग, मंत्रालय, भोपाल की सहमति से दिनांक 17 जुलाई, 2014 की अधिसूचना द्वारा श्री विजय मदन लाल चौधरी और यूनियन बैंक ऑफ इंडिया के दो बैंक अधिकारियों के विरुद्ध तथा उपर्युक्त उपराध के संबंध में अथवा से संबंध प्रयास करने, दुष्प्रेरण करने और षड्यंत्र करने के विरुद्ध पुलिस स्टेशन पलासिया, जिला इंदौर (मध्य प्रदेश) में दर्ज किए गए अपराध मामला सं. 499/2011 के संबंध में भारतीय दण्ड संहिता 1860 (1860 का अधिनियम सं. 45) की धारा 406, 420, 467, 468, 471 एवं 120 ख के तहत दण्डनीय अपराधों की जांच करने के लिए दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों और न्यायाधिकार क्षेत्र का विस्तार संपूर्ण मध्य प्रदेश राज्य पर करती है।

[फा. सं. 228/71/2013-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 15th October, 2014

S.O. 2761.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Madhya Pradesh, Home Department, Mantralaya, Bhopal vide Notification No. F. 12-98/2013/B-1/(Two) dated 17th July, 2014, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Madhya Pradesh for investigation of offences punishable under sections 406, 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 (Act No. 45 of 1860) relating to criminal Case No. 499/2011 registered at Police Station Palasiya District Indor (Madhya Pradesh) against Shri Vijay Madanlal Chaudhary and two Bank officers of the Union Bank of India and attempts, abetment and conspiracies in relation to or in connection with the above mentioned offence.

[F.No. 228/71/2013-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 16 अक्टूबर, 2014

का.आ. 2762.—दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946, (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार महाराष्ट्र राज्य सरकार, गृह विभाग, सेंटर-1, मुम्बई की सहमति से दिनांक 25 जुलाई, 2014 की अधिसूचना सीआरएम-2012/सीआर. 136/पीओएल. 11 के तहत भारतीय दंड प्रक्रिया संहिता, 1860 (1860 की अधिनियम सं. 45) की धारा 419, 420, 464, तथा 471 के तहत धारावी पुलिस स्टेशन में सी.आर. सं. 365/2013 के अंतर्गत दर्ज अपराधों के संबंध में प्रयत्न, अवप्रेरण तथा षडयंत्रों के लिए दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों एवं न्यायाधिकार क्षेत्र का विस्तार संपूर्ण महाराष्ट्र राज्य पर करती है।

[फा. सं. 228/58/2014-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 16th October, 2014

S.O. 2762.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Maharashtra, Home Department, Center-1, Mumbai vide Notification No. CRM-2012/CR. 136/Pol. 11 dated 25th July, 2014, hereby extends the powers and Jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Maharashtra for investigation of the case, registered at Dharavi Police Station vide C. R. No. 365/2013 under sections 419, 420, 464 and 471 of the Indian Penal Code, 1860 (Act No. 45 of 1860) and attempts, abetments and conspiracies in relation to the above mentioned offences.

[F.No. 228/58/2014-AVD-II]

RAJIV JAIN, Under Secy.

नवीन और नवीकरणीय ऊर्जा मंत्रालय

नई दिल्ली, 14 अक्टूबर, 2014

का.आ. 2763.—हिंदी केंद्रीय सरकार राजभाषा (संघ के राजकीय प्रयोजनों के लिए) नियम 10 के उपनियम (4) के अनुसरण में नवीन और नवीकरणीय ऊर्जा मंत्रालय के प्रशासनिक नियंत्रणाधीन उपक्रम भारतीय सौर ऊर्जा निगम, नई दिल्ली, को जिसके 80% से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

[सं. 11011(1)/2014-हिंदी]

वीणा भटनागर, उप-निदेशक (रा.भा.)

MINISTRY OF NEW AND RENEWABLE ENERGY

New Delhi, the 14th October, 2014

S.O. 2763.—In Pursuance of Sub Rule (4) of Rule 10 of the Official Language (Use for Official purposes of the

Union) Rules, 1976 the Central Government hereby notifies Solar Energy Corporation of India, New Delhi, an undertaking under the administrative control of Ministry of New & Renewable Energy, more than 80% Staff where of have acquired a working knowledge of Hindi.

[No. 11011 (1)/2014-Hindi]

VEENA BHATNAGAR, Dy. Director (OL)

वाणिज्य और उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2764.—केन्द्रीय सरकार, निर्यात (क्वालिटी) नियंत्रण और निरीक्षण) नियम, 1964 के नियम 12 के उपनियम (2) के साथ पठित निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स इन्सपेक्टोरेट ग्रिफिथ इंडिया कम्पनी प्राइवेट लिमिटेड, पारादीप, एचआईजी-34, गौरव बिहार, मधुवन, पारादीप-754142, को इस अधिनियम की धारा 7 की उपधारा (1) के प्रयोजन के लिए इस अधिसूचना, के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए भारत सरकार के वाणिज्य मंत्रालय की अधिसूचना सं. का.आ. 3975 तारीख 20 दिसम्बर, 1965 और का.आ. 3978 तारीख 20 दिसम्बर, 1965 से संलग्न अनुसूची में विनिर्दिष्ट खनिजों और अयस्कों (ग्रुप-I) अर्थात्, लौह अयस्क और ग्रुप-II अर्थात् क्रोम अयस्क क्रोम स्कॉट्रिट सहित निरीक्षण के लिए क्रमशः निर्यात से पूर्व उक्त खनिज और अयस्क को निम्नलिखित शर्तों के अधीन पारादीप, में मान्यता देती है, अर्थात्:

- (i) मैसर्स इन्सपेक्टोरेट ग्रिफिथ इंडिया कम्पनी प्राइवेट लिमिटेड, पारादीप, एचआईजी-34, गौरव बिहार, मधुवन, पारादीप-754142, खनिज और अयस्क ग्रुप-I का निर्यात (निरीक्षण) नियम, 1965 और खनिज और अयस्क ग्रुप-II का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन उनके द्वारा अपनाई गई निरीक्षण की पद्धति की जांच करने के लिए, इस निमित्त निर्यात निरीक्षण परिषद् द्वारा नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी; और
- (ii) मैसर्स इन्सपेक्टोरेट ग्रिफिथ इंडिया कम्पनी प्राइवेट लिमिटेड, पारादीप, एचआईजी-34, गौरव बिहार, मधुवन, पारादीप-754142, इस अधिसूचना के अधीन अपने कृत्यों के पालन में निदेशक (निरीक्षण और क्वालिटी नियंत्रण) निर्यात निरीक्षण परिषद् द्वारा समय-समय पर लिखित में दिए गए ऐसे निर्देशों से आबद्ध होंगे।

[फा. सं. 4/4/2014-निर्यात निरीक्षण]

ए. के. त्रिपाठी, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY**(Department of Commerce)**

New Delhi, the 20th October, 2014

S.O. 2764.—In exercise of the powers conferred by sub-section (1) of Section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognizes M/s. Inspectorate Griffith India Private Limited, Paradip, HIG-34, Gourav Bihar, Madhuban, Paradip-754142, as an agency for the purpose of sub-section (1) of Section 7 of the Act for a period of three years from the date of publication of this notification, for the inspection of Minerals and Ores (Group-I) namely, Iron ore and Group-II Chrome Ore including chrome concentrates, specified in the Schedule annexed to the notification of the Government of India in the Ministry of Commerce vide number S.O. 3975, dated the 20th December, 1965, and S.O. 3978, dated the 20th December, 1965 respectively, prior to export of the said Minerals and Ores at Paradip, subject to the following conditions, namely :—

- (i) that M/s Inspectorate Griffith India Private Limited, Paradip, HIG-34, Gourav Bihar, Madhuban, Paradip-754142, shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in carrying out the inspection under rule 4 of the Export of Minerals and Ores, Group-I (Inspection) Rules, 1965 and the Export of Minerals and Ores, Group-II (Inspection) Rules, 1965; and
- (ii) that M/s Inspectorate Griffith India Private Limited, Paradip, HIG-34, Gourav Bihar, Madhuban, Paradip-754142, in the performance of their function under this notification shall be bound by such directions as the Director (Inspection and Quality Control), Export Inspection Council may give in writing from time to time.

[F. No. 4/4/2014-Export Inspection]

A. K. TRIPATHY, Jt. Secy.

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2765.—केन्द्रीय सरकार, निर्यात (क्वालिटी) नियंत्रण और निरीक्षण) नियम, 1964 के नियम 12 के उपनियम (2) के साथ पठित निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स सुपरिन्टेंडेंस कम्पनी इंडिया प्राइवेट लिमिटेड, प्लॉट नं. 545/1707 (द्वितीय तल), संजीवनी अस्पताल के समीप, लिब्स रोड, भुवनेश्वर-751002, भारत में स्थित है, को इस अधिसूचना,

के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए भारत सरकार के वाणिज्य मंत्रालय, की अधिसूचना सं. का.आ. 3975 तारीख 20 दिसम्बर, 1965 और का.आ. 3978 तारीख 20 दिसम्बर, 1965, की अधिसूचना में उपाबद्ध अनुसूचियों में विनिर्दिष्ट खनिज और अयस्क, समूह-1, बक्साइड तथा खनिज और अयस्क समूह-II, अर्थात् जिंक कन्सेनट्रेट को क्रमशः निर्यात से पूर्व निम्नलिखित शर्तों के अधीन उड़ीसा, पारादीप में उक्त खनिज और अयस्क के निरीक्षण करने के लिए एक अधिकरण के रूप में मान्यता देती है, अर्थात्:—

- (i) मैसर्स सुपरिन्टेंडेंस कम्पनी इंडिया प्राइवेट लिमिटेड, प्लॉट नं. 545/1707 (द्वितीय तल), संजीवनी अस्पताल के समीप, लिब्स रोड, भुवनेश्वर-751002, खनिज और अयस्क ग्रुप-I का निर्यात (निरीक्षण) नियम, 1965 और खनिज और अयस्क समूह-II का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन उनके द्वारा अपनाई गई निरीक्षण की पद्धति की जांच करने के लिए, इस निमित्त निर्यात निरीक्षण परिषद् द्वारा नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी; और
- (ii) मैसर्स सुपरिन्टेंडेंस कम्पनी इंडिया प्राइवेट लिमिटेड, प्लॉट नं. 545/1707 (द्वितीय तल), संजीवनी अस्पताल के समीप, लिब्स रोड, भुवनेश्वर-751002, इस अधिसूचना के अधीन अपने कृत्यों के पालन में निदेशक (निरीक्षण और क्वालिटी नियंत्रण) निर्यात निरीक्षण परिषद् समय-समय पर लिखित में दिए गए ऐसे निदेशों से आबद्ध होंगे।

[फा. सं. 4/3/2014-निर्यात निरीक्षण]

ए. के. त्रिपाठी, संयुक्त सचिव

New Delhi, the 20th October, 2014

S.O. 2765.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognizes M/s Superintendence Company of India Private Limited, Plot No. 545/1707 (2nd floor), Near Sanjeevni Hospital, Lewis Road, Bhubaneswar-751002, as an agency for the purpose of sub-section (1) of section 7 of the Act for a period of three years from the date of publication of this notification, for the inspection of Minerals and Ores (Group-I) namely, Iron Ore and Group-II Chrome Ore including chrome concentrates, specified in the Schedule annexed to the notifications of the Government of India in the Ministry of Commerce vide Number S.O. 3975, dated the 20th December, 1965, and S. O. 3978, dated the 20th December, 1965 respectively, prior to export of the said Minerals and Ores at Paradip, subject to the following conditions, namely:—

- (i) that M/s Superintendence Company of India Private Limited, Plot No. 545/1707 (2nd floor), Near Sanjeevni Hospital, Lewis Road, Bhubaneswar-751002, shall give adequate facilities to the officers

nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in carrying out the inspection under rule 4 of the Export of Minerals and Ores, Group-I (Inspection) Rules, 1965 and the Export of Minerals and Ores, Group-II (Inspection) Rules, 1965; and

- (ii) that M/s Superintendence Company of India Private Limited, Plot No. 545/1707 (2nd floor), Near Sanjeevni Hospital, Lewis Road, Bhubaneswar-751002, in the performance of their function under this notification shall be bound by such directions as the Director (Inspection and Quality Control), Export Inspection Council may give in writing from time to time.

[F. No. 4/3/2014-Export Inspection]

A. K. TRIPATHY, Jt. Secy.

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2766.—केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उप-धारा (1) के साथ पठित निर्यात (क्वालिटी नियंत्रण और निरीक्षण) नियम, 1964 के नियम 12 के उपनियम (2), के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स ईटालैब प्राइवेट लिमिटेड, लोटस कोर्ट, तीसरी मंजिल, पुराना नं. 165, नया नं. 338, थम्बू चैट्टी स्ट्रीट चैन्नई- 600001 को इस अधिसूचना के प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए भारत सरकार के वाणिज्य मंत्रालय की अधिसूचना सं. का.आ. 3975 तारीख 20 दिसम्बर, 1965 से उपाबद्ध अनुसूची में विनिर्दिष्ट खनिज और अयस्क, ग्रुप-I, अर्थात् लौह अयस्क का निम्नलिखित शर्तों के अधीन रहते हुए उक्त, खनिजों और अयस्कों का चैन्नई में, निर्यात से पूर्व निरीक्षण करने के लिए एक अधिकरण के रूप में मान्यता प्रदान करती है, अर्थात्:-

- (i) मैसर्स ईटालैब प्राइवेट लिमिटेड, लोटस कोर्ट, तीसरी मंजिल, पुराना नं. 165, नया नं. 338, थम्बू चैट्टी स्ट्रीट चैन्नई-600001, खनिज और अयस्क ग्रुप-I का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण करने के लिए उनके द्वारा अपनाई गई निरीक्षण की पद्धति की जांच करने के लिए इस निमित्त निर्यात निरीक्षण परिषद् द्वारा नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी;
- (ii) मैसर्स ईटालैब प्राइवेट लिमिटेड, लोटस कोर्ट, तीसरी मंजिल, पुराना नं. 165, नया नं. 338, थम्बू चैट्टी स्ट्रीट चैन्नई-600001, इस अधिसूचना के अधीन अपने कृत्यों के पालन में निदेशक (निरीक्षण और क्वालिटी नियंत्रण) निर्यात निरीक्षण परिषद् समय-समय पर लिखित में दिए गए ऐसे निर्देशों से आबद्ध होंगे।

[फा. सं. 4/2/2014-निर्यात निरीक्षण]

ए. के. त्रिपाठी, संयुक्त सचिव

New Delhi, the 20th October, 2014

S.O. 2766.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964 the Central Government hereby recognizes M/s Italab Private Limited, Lotus Court, 3rd Floor, Old No. 165, New No. 338, Thambu Chetty Street, Chennai-600001 as an agency for a period of three years with effect from the date of publication of this notification, for inspection of Minerals and Ores (Group-I), Namely, Iron ore as specified in the Schedule annexed to the notification of the Government of India in the Ministry of Commerce number S.O. 3975, dated the 20th December 1965, prior to export of the said Minerals and Ores at Chennai, subject to the following conditions, namely:—

- (i) that M/s Italab Private Limited, Lotus Court, 3rd Floor, Old No. 165, New No. 338, Thambu Chetty Street, Chennai-600001, shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in carrying out the inspection under rule 4 of the Export of Minerals and Ores, Group-I (Inspection) Rules, 1965;
- (ii) that M/s Italab Private Limited, Lotus Court, 3rd Floor, Old No. 165, New No. 338, Thambu Chetty Street, Chennai-600001, in the performance of their function under this notification shall be bound by such directions as the Director (Inspection and Quality Control), Export Inspection Council, may give in writing from time to time.

[F. No. 4/2/2014-Export Inspection]

A. K. TRIPATHY, Jt. Secy.

स्वास्थ्य और परिवार कल्याण मंत्रालय

(आयुष विभाग)

नई दिल्ली, 14 अक्टूबर, 2014

का.आ. 2767.—दिनांक 25 अगस्त, 2014 की समसंख्यक अधिसूचना के क्रम में, श्री जयप्रकाश अग्रवाल, अध्यक्ष, सूर्य फाउन्डेशन, नई दिल्ली को देश में समग्र स्वास्थ्य की संकल्पना के संवर्धन की संभाव्यता का पता लगाने के लिए गठित समिति के सदस्य के रूप में शामिल किया गया है।

2. अधिसूचना की अन्य शर्तें यथावत रहेंगी।

[सं. जेड-28015/124/2014-पी एंड सी]

अनिल गनेरीवाला, संयुक्त सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE**(Department of AYUSH)**

New Delhi, the 14th October, 2014

S.O. 2767.—In continuation of Notification of even number dated 25th August, 2014. Shri Jaiprakash Agarwal, Chairman, Surya Foundation, New Delhi has been included as a Member of the Committee constituted to explore the possibility of promoting the concept of Holistic Health in the country.

2. Other terms and conditions of the Notification will remain the same.

[No. Z-28015/124/2014-P&C]

ANIL GANERIWALA, Jt. Secy.

मानव संसाधन विकास मंत्रालय**(उच्चतर शिक्षा विभाग)****(राजभाषा यूनिट)**

नई दिल्ली, 17 अक्टूबर, 2014

का.आ. 2768.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम 4 के अनुसरण में, मानव संसाधन विकास मंत्रालय (स्कूल शिक्षा एवं साक्षरता विभाग) के अंतर्गत केन्द्रीय विद्यालय संगठन (मुख्यालय), नई दिल्ली के निम्नलिखित 8 केन्द्रीय विद्यालयों को, ऐसे कार्यालयों के रूप में, जिसके 80 प्रतिशत से अधिक कर्मचारी-वृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:

1. केन्द्रीय विद्यालय, एनएफसी, विज्ञान विहार (प्रथमी पाल), निकट विवेक विहार पुलिस स्टेशन, दिल्ली-110092
2. केन्द्रीय विद्यालय, शालीमार बाग (द्वितीय पाली), ए.एन ब्लॉक, दिल्ली-110088
3. केन्द्रीय विद्यालय, सैनिक विहार, (द्वितीय पाली), रानी बाग, नई दिल्ली-110034
4. केन्द्रीय विद्यालय, सेक्टर-2, आर. के. पुरम (द्वितीय पाली), नई दिल्ली-110022
5. केन्द्रीय विद्यालय, एंड्रयूज गंज, (प्रथम पाली), नई दिल्ली-110024
6. केन्द्रीय विद्यालय, मस्जिद मोठ, (द्वितीय पाली), सादिक नगर, सेक्टर-3, नई दिल्ली-110049
7. केन्द्रीय विद्यालय, विकासपुरी (द्वितीय पाली), हस्तसाल गांव, उत्तम नगर, नई दिल्ली-110059
8. केन्द्रीय विद्यालय, चित्रकूट, रैन बसेरा, सीतापुर, जिला-चित्रकूट (उ.प्र.)-210204

[सं. -11011-3/2014-रा.भा.ए.]

सुखबीर सिंह संधू, संयुक्त सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT**(Department of Higher Education)**

(O.L. Unit)

New Delhi, the 17th October, 2014

S.O. 2768.—In pursuance of sub. rule (4) of rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following 8 Kendriya Vidyalayas of Kendriya Vidyalaya Sangathan (HQ), New Delhi under the Ministry of Human Resource Development, (Department of School Education & Literacy) as offices, whose more than 80% members of the staff have acquired working knowledge of Hindi:

1. Kendriya Vidyalaya, NFC, Vigyan Vihar (First Shift), Near Vivek Vihar Police Station, Delhi-110092
2. Kendriya Vidyalaya, Shalimar Bagh (Second Shift), Delhi-110088
3. Kendriya Vidyalaya, Sainik Vihar (Second Shift), Rani Bagh, New Delhi-110034
4. Kendriya Vidyalaya, Sector 2, R. K. Puram (Second Shift), New Delhi-110022
5. Kendriya Vidyalaya, Andrews Ganj (First Shift), New Delhi-110024
6. Kendriya Vidyalaya, Masjid Moth, (Second Shift), Sadiq Nagar, Sector-3 New Delhi-110049
7. Kendriya Vidyalaya, Vikaspuri (Second Shift), Hastal Village, Uttam Nagar, New Delhi-110059
8. Kendriya Vidyalaya, Chitrakoot, Rain Basera, Sitapur, Dist. Chitrakoot (U.P.)-210204

[No. 11011-3/2014-O.L.U]

SUKHBIR SINGH SANDHU, Jt. Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 21 अक्टूबर, 2014

का.आ. 2769.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खंड (क) के अनुसरण में उक्त अधिनियम के अधीन हरियाणा राज्य एवं राष्ट्रीय राजधानी क्षेत्र दिल्ली के भीतर गेल (इण्डिया) लिमिटेड की सभी पाइपलाइनों के लिये सक्षम प्राधिकारी के कार्यों का निर्वहन करने, के लिये श्री बलराज सिंह डांगी तहसीलदार, हरियाणा सरकार को दिनांक 08.09.2014 से प्राधिकृत करती हैं।

[फा. सं. एल-14014/35/2014-जी.पी.-II]

एस. पी. अग्रवाल, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 21st October, 2014

S.O. 2769.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), Central Government hereby authorizes Sh. Balraj Singh Dangi, Tehsildar, Government of Haryana to perform the functions of Competent Authority for all pipelines of GAIL (India) Limited, under the said Act, within Haryana State and National Capital Territory of Delhi w.e.f. 08.09.2014.

[F.No.L-14014/35/2014-GP-II]

S. P. AGARWAL, Under Secy.

कोयला मंत्रालय**आदेश**

नई दिल्ली, 17 अक्टूबर, 2014

का.आ. 2770.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उप-धारा (1) के अधीन जारी भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का. आ. 3907 (अ), तारीख 30 दिसम्बर, 2013, जिसे भारत के राजपत्र, असाधारण, भाग-II, खंड 3, उपखंड (ii), तारीख 30 दिसम्बर, 2013 में प्रकाशित की गई थी, उक्त अधिसूचना से संलग्न अनुसूची में वर्णित 158.28 हेक्टेयर (लगभग) या 390.95 एकड़ (लगभग) माप वाली भूमि में (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) भूमि में या उस पर के सभी अधिकार उक्त अधिनियम की धारा 10 की उप-धारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आतयंतिक रूप से केन्द्रीय सरकार में निहित हो गए हैं।

और केन्द्रीय सरकार का यह समाधान हो गया है, कि सेंट्रल कोलफील्ड्स लिमिटेड, राँची, झारखंड (जिसे इसमें इसके पश्चात् सरकारी कम्पनी कहा गया है), ऐसे निबंधनों और शर्तों का जिन्हें केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए रजामंद है।

अतः अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है, कि 158.28 हेक्टेयर (लगभग) या 390.95 एकड़ (लगभग) इस प्रकार निहित उक्त भूमि में और भूमि में या उस पर के सभी अधिकार केन्द्रीय सरकार में इस प्रकार निहित बने रहने के बजाए, तारीख 30 दिसम्बर, 2013, से निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए सरकारी कंपनी में निहित हो जाएंगे, अर्थात् :—

(1) सरकारी कंपनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानियों और वैसी ही मदों की बाबत किए गए सभी संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी;

(2) शर्त (1) के अधीन, सरकारी कंपनी द्वारा केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजनों के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा तथा ऐसे किसी अधिकरण और उक्त अधिकरण की सहायता करने के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, सरकारी कंपनी द्वारा वहन किए जाएंगे और इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के लिए या उनके संबंध में सभी विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय भी, सरकारी कंपनी द्वारा वहन किए जाएंगे ;

3. सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो;

(4) सरकारी कंपनी को केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमि और इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और

(5) सरकारी कंपनी, ऐसे निदेशों और शर्तों का पालन करेगी जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं।

[फा. सं. 43015/12/2012-पीआरआईडब्ल्यू-1]

दोमिनिक डुंगडुंग, अवर सचिव

MINISTRY OF COAL**ORDER**

New Delhi, the 17th October, 2014

S.O. 2770.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal number S.O. 3907(E), dated the 30th December, 2013, in the Gazette of India, Extraordinary, Part-II, section 3, sub-section (ii), dated the 30th December, 2013, issued under sub-section (1) of section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the land measuring 158.28 hectares (approximately) or 390.95 acres (approximately) as all the rights in or over the said land described in the Schedule appended to the said notification (hereinafter referred to as the said land) are vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act.

And whereas, the Central government is satisfied that the Central Coalfields Limited, Ranchi, Jharkhand (hereinafter referred to as the Government company) is

willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf.

New, therefore, in exercise of the power conferred by sub-section (1) of section 11 of the Coal bearing Areas (Acquisition and Development) Act, 1957, the Central government hereby directs that the all rights of 158.28 hectares (approximately) or 390.95 acres (approximately) in or over the said land so vested shall with effect from 30 December, 2013 instead of continuing to so vest in the Central Government, vest in the Government company, subject to the following terms and conditions, namely :—

(1) the Government company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like as determined under the provisions of the said Act;

(2) a Tribunal shall be constituted under section 14 of the said Act, for the purpose of determining the amounts payable to the Central government by the said Government company under condition (1) and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the said Tribunal shall be borne by the said Government company and similarly, all expenditure incurred in respect of all legal proceedings for or in connection with the rights, in the said lands so vesting shall also be borne by the government company;

(3) the government company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the rights in or over the said land so vested;

(4) the Government company shall have no power to transfer the said land and the rights in or over the said land so vested to any other person without the prior approval of the Central Government; and

(5) the Government company shall abide by such direction and conditions as may be given or imposed by the Central Government for particular areas of the said land as and when necessary.

[F. No. 43015/12/2012-PRIW-I]

DOMINIC DUNG DUNG, Under Secy.

आदेश

नई दिल्ली, 27 अक्टूबर, 2014

का.आ. 2771.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उपधारा (1) के अधीन

जारी भारत के राजपत्र, असाधारण, भाग-II, खंड 3, उपखंड (ii), तारीख 10 जुलाई, 2014 में जिसे भारत सरकार के कोयला मंत्रालय की अधिसूचना का.आ. संख्यांक 1726(अ), तारीख 26 मार्च, 2014 में प्रकाशित की गई थी, उक्त अधिसूचना से उपाबद्ध अनुसूची में वर्णित 292.26 हेक्टेयर (लगभग) या 722.17 एकड़ (लगभग) माप वाली भूमि में (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) या उस पर के सभी अधिकार उक्त अधिनियम की धारा 10 की उप-धारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप में केन्द्रीय सरकार में निहित हो गए हैं।

और, केन्द्रीय सरकार का यह समाधान हो गया है, कि वेस्टर्न कोलफील्ड्स लिमिटेड, नागपुर, महाराष्ट्र (जिसे इसमें इसके पश्चात् सरकारी कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का जिन्हें केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए रजामंद हैं।

अतः, अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम 1957 की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि 292.26 हेक्टेयर (लगभग) या 722.17 एकड़ (लगभग) उक्त भूमि में या उस पर के सभी अधिकार केन्द्रीय सरकार में इस प्रकार निहित बने रहने के बजाए, तारीख 10 जुलाई, 2014 से निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, सरकारी कंपनी में निहित हो जाएंगे, अर्थात्:—

(1) सरकारी कंपनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानियों और वैसी ही मदों की बाबत किए गए संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी;

(2) शर्त (1) के अधीन सरकारी कंपनी द्वारा केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजनों के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा और ऐसे किसी अधिकरण और उक्त अधिकरण की सहायता के लिए नियुक्ति व्यक्तियों के संबंध में उपगत सभी व्यय, सरकारी कंपनी द्वारा वहन किए जाएंगे और इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के लिए या उनके संबंध में सभी विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय भी, सरकारी कंपनी द्वारा वहन किए जाएंगे;

(3) सरकारी कंपनी, केन्द्रीय सरकार या उनके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी, जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो;

(4) सरकारी कंपनी को केन्द्रीय सरकार के पूर्व अनुमोदन के बिना उक्त भूमि और इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और

(5) सरकारी कंपनी, ऐसे निदेशों और शर्तों का पालन करेगी, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं।

[फा. सं. 43015/7/2010-पीआरआईडब्ल्यू-1]
दोमिनिक डुंगडुंग, अवर सचिव

ORDER

New Delhi, the 27th October, 2014

S.O. 2771.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal, number S.O. 1726(E), dated the 26th March, 2014, in the Gazette of India, Extraordinary, Part-II, Section 3, sub-section (ii), dated the 10th July, 2014, issued under sub-section (1) of Section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957, (20 of 1957) (hereinafter referred to as the said Act), the land measuring 292.26 hectares (approximately) or 722.17 acres (approximately) as the rights in or over the land described in the Schedule appended to the said notification (hereinafter referred to as the said land) are vested absolutely in the Central Government free from all encumbrances under sub-section (1) of Section 10 of the said Act.

And whereas the Central Government is satisfied that the Western Coalfields Limited, Nagpur, Maharashtra (hereinafter referred to as the Government company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 11 of the Coal Bearing Areas (Acquisition and Development) Act, 1957, the Central Government hereby direct that the 292.26 hectares (approximately) or 722.17 acres (approximately) in or over the said land so vested shall, with effect from 10th July, 2014, instead of continuing to so vest in the Central Government, vest in the Government company, subject to the following terms and conditions, namely:—

(1) the Government company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like, as determined under the provisions of the said Act;

(2) a Tribunal shall be constituted under Section 14 of the said Act, for the purpose of determining the amounts payable to the Central Government by the Government company under conditions (1), and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the said Tribunal shall be borne by the said Government company and similarly, all expenditure incurred in respect of all legal proceedings for or in connection with the rights, in or over the said land, so

vesting shall also be borne by the said Government Company;

(3) the Government company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the rights in or over the said land so vested;

(4) the Government company shall have no power to transfer the said land and the rights in or over the said land so vested to any other person without the prior approval of the Central Government; and

(5) the Government company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said lands, as and when necessary.

[F.No. 43015/7/2010-PRIW-I]

DOMINIC DUNGUNG, Under Secy.

आदेश

नई दिल्ली, 27 अक्टूबर, 2014

का.आ. 2772.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उप-धारा (1) के अधीन जारी भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का.आ. 1104(अ), तारीख 15 अप्रैल, 2014 जिसे भारत के राजपत्र, असाधारण, भाग-II, खंड-3, उप-खंड (ii), तारीख 17 अप्रैल, 2014 में प्रकाशित की गई थी, उक्त अधिसूचना से संलग्न अनुसूची में वर्णित 178.74 हेक्टेयर (लगभग) या 441.49 एकड़ (लगभग) माप वाली भूमि में (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) भूमि में या उस पर के सभी अधिकार उक्त अधिनियम की धारा 10 की उप-धारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप से केन्द्रीय सरकार में निहित हो गए हैं।

और केन्द्रीय सरकार का यह समाधान हो गया है कि सेंट्रल कोलफील्ड्स लिमिटेड, रांची, झारखंड (जिसे इसमें इसके पश्चात् सरकारी कम्पनी कहा गया है), ऐसे निबंधनों और शर्तों का जिन्हें केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए रजामंद है।

अतः, अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि 178.74 हेक्टेयर (लगभग) या 441.49 एकड़ (लगभग) इस प्रकार निहित उक्त भूमि में और भूमि में या उस पर के सभी अधिकार केन्द्रीय

सरकार में इस प्रकार निहित बने रहने के बजाए, तारीख 17 अप्रैल, 2014 से निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए सरकारी कंपनी में निहित हो जाएंगे, अर्थात्:-

(1) सरकारी कंपनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानियों और वैसी ही मदों की बाबत किए गए संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी;

(2) शर्त (1) के अधीन सरकारी कम्पनी द्वारा केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजनों के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा और ऐसे किसी अधिकरण और उक्त अधिकरण की सहायता के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, सरकारी कंपनी द्वारा वहन किए जाएंगे और इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के लिए या उनके संबंध में अपील आदि सभी विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय भी, सरकारी कंपनी द्वारा वहन किए जाएंगे;

(3) सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी, जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो;

(4) सरकारी कंपनी को केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमि और इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और

(5) सरकारी कंपनी, ऐसे निदेशों और शर्तों का पालन करेगी, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं।

[फा. सं. 43015/18/2012-पीआरआईडब्ल्यू-I]

दोमिनिक डुंगडुंग, अवर सचिव

ORDER

New Delhi, the 27th October, 2014

S.O. 2772.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal number S.O. 1104(E), dated the 15th April, 2014, in the Gazette of India, Extraordinary, Part-II, Section 3, sub-section (ii), dated the 17th April, 2014, issued under sub-section (1) of Section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the land measuring 178.74 hectares (approximately) or 441.49 acres (approximately) as all the rights in or over the said land described in the Schedule appended to the said notification (hereinafter referred to

as the said land) are vested absolutely in the Central Government free from all encumbrances under sub-section (1) of Section 10 of the said Act.

And whereas the Central Government is satisfied that the Central Coalfields Limited, Ranchi, Jharkhand (hereinafter referred to as the Government company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 11 of the Coal Bearing Areas (Acquisition and Development) Act, 1957, the Central Government hereby direct that the 178.74 hectares (approximately) or 441.49 acres (approximately) the said land and the rights in or over the said land so vested shall, with effect from 17th April, 2014, instead of continuing to so vest in the Central Government, vest in the Government company, subject to the following terms and conditions, namely:—

(1) the Government company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like, as determined under the provisions of the said Act;

(2) a Tribunal shall be constituted under Section 14 of the said Act, for the purpose of determining the amounts payable to the Central Government by the Government company under condition (1), and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the said Tribunal shall be borne by the said Government company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc. for or in connection with the rights, in or over the said land, so vested shall also be borne by the said Government Company;

(3) the Government company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the rights in or over the said land so vested;

(4) the Government company shall have no power to transfer the said land and the rights in or over the said land so vested to any other person without the prior approval of the Central Government; and

(5) the Government company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said lands, as and when necessary.

[F.No. 43015/18/2012-PRIW-I]

DOMINIC DUNG DUNG, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 14 अक्टूबर, 2014

का.आ. 2773.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, असनसोल के पंचाट (संदर्भ सं. 64/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.10.2014 को प्राप्त हुआ था।

[सं. एल-22012/528/99-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 14th October, 2014

S.O. 2773.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 64/2000) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of ECL, and their workmen, received by the Central Government on 14.10.2014.

[No. L-22012/528/99-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ASANSOL**

PRESENT:

Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 64 OF 2000**PARTIES:**

The management of Jhanjra 1/2 Incline of M/s. ECL

Vs.

Md. Sobhan Mia and 13 others

REPRESENTATIVES:

For the Management : Sri. P.K. Das, Ld. Adv.

For the Union (Workman) : None

INDUSTRY: COAL STATE: WEST BENGAL

Dated: 24.09.14

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India

through the Ministry of Labour vide its Order No. L-22012/528/99-IR(CM-II) dated 13.07.2000 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Jhanjra 1/2 Incline of M/s. ECL in reduction of wages of Md. Sobhan Mia and 13 others (list enclosed) on transfer from Kumardih ‘B’ Colliery to Jhanjra 1/2 Incline is legal and justified? If not, to what relief the workman is entitled?”

Having received the Order of Letter No. L-22012/528/99-IR(CM-II) dated 13.07.2000 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. 64 of 2000 was registered on 01.08.2000 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On Perusal of the case record I find that my predecessor (Late Jayanta Kumar Sen, the then P.O.) had reserved this case for an award because the workman neither appeared nor took any step since long despite registered notices. It seems that the workman has now no more interest left to proceed with this case further. The case is also too old – in the year 2000 and I find no reason to keep this old record pending without any result. As such the case is closed and accordingly a ‘No Dispute Award’ may be passed.

ORDER

Let an “Award” be and the same is passed as “No Dispute” existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for needful information. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2014

का.आ. 2774.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 206/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.10.2014 को प्राप्त हुआ था।

[सं. एल-22012/164/1997-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 14th October, 2014

S.O. 2774.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 206/1997) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of SECL, and their workmen, received by the Central Government on 14.10.2014.

[No. L-22012/164/1997-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/206/97

PRESIDING OFFICER : SHRI R. B. PATLE

Secretary,
Koyla Mazdoor Sabha (UTUC),
J & K Area, Lusai Camp,
Post Kotma,
Distt. Shahdol (MP)

...Workman/Union

Versus

Chief General Manager,
Hasdeo Area of SECL,
Post South Jhagrakhand Colliery,
Distt. Surguja (MP)

...Management

AWARD

Passed on this 22nd day of September, 2014

1. As per letter dated 22-7-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-22012/164/97-IR(C-II). The dispute under reference relates to:

“ Whether the action of the management of Mines Rescue Station, SECL, Mahendragarh in dismissing Shri Dilip Kumar Bannerjee, Cashier Grade-I from service w.e.f. 25-12-95 is legal and justified? If not, to what relief is the workmen entitled and from which date?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/5. Case of workman is that vide order dated 25-12-95, he was dismissed from service. He was working as Cashier Grade I in Mines Rescue Station, Mahendragarh. Chargesheet was issued to him on 5-10-94 for allegations

of tampering, manipulating original computerized statement submitted to Bank for salary of August 1994. Charge was also in connivance with other employees Vivekanand Ram and Bijoy Kumar. That they had misappropriated amount more than One Lakh.

3. After appointing Enquiry Officer and Presenting Officer, enquiry was conducted. Enquiry Officer submitted his finding that charges were proved. Disciplinary Authority without considering his submissions, issued order of his dismissal. Workman submits Enquiry Officer was biased. He was not allowed opportunity for his defence. Other co-accused were protected. During pendency of enquiry, amount was recovered from subsistence allowance. Workman was not allowed to cross-examine witnesses of the management. The findings of Enquiry Officer are perverse. On such ground, workman prays for his reinstatement with back wages.

4. IInd party filed Written Statement at Page 6/1 to 6/29. It is submitted that workman was working as cashier in Mines Rescue Station, Hasdeo Area. It was his duty to observe rules and regulations. He was authorized to make payment only on basis of passed order and instructions. Workman was to keep records of specimen signatures of authorized officers. After receiving chargesheet, enquiry was conducted against workman. The witnesses of management were cross-examined by his co-worker. Opportunity for his defence was given. The misconduct conducted by workman is of serious nature. It is dangerous to continue him in employment. If enquiry is vitiated, management be allowed to prove misconduct by adducing evidence. It is reiterated that enquiry conducted against workman is proper. Showcause notice is issued to workman, other employees were also issued chargesheet. They were reinstated after settlement.

5. Workman submitted rejoinder at Page 7/1 to 7/6 reiterating his contentions in statement of claim. Management also filed rejoinder at Page 0/3 to 10/7.

6. Enquiry conducted against workman is found vitiated as per order dated 20-12-2010 by my predecessor. Management was permitted to prove misconduct in Court.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Mines Rescue Station, SECL, Mahendragarh in dismissing Shri Dilip Kumar Bannerjee, Cashier Grade-I from service w.e.f. 25-12-95 is legal and justified? In Negative

(ii) If not, what relief the workman is entitled to?”
As per final order.

REASONS

8. As discussed above, enquiry conducted against workman is found illegal. Management was permitted to prove misconduct in Court. Management filed affidavit of witness Shri Shambhu Sharan. Witness of management stated that wages of workman was disbursed through Bank account. The documents in respect of wages, check list for rescue employees were prepared through computer. Chargesheet Exhibit M-1 was issued to workman. Charges were of tampering, manipulating original computer statement etc. workman had embezzled company's money Rs. 4224.83 and deposited in his name. amount Rs.6983/- in name of Vivekanand Clerk Grade-II- Rs.6911.83, Shri Vijay Kumar s.5000.27 & Shri A.K.Mukherjee Rs. 904.83 in name of Grade I clerk. The excess payment was deposited with accounts of workman as well as above persons. Workman Shri D.K.Bajjerjee was paid excess amount Rs. 11,353.81 in June and July 1993. Workman forged signature of Suptd. of mines. Amount Rs. 66427.11 was unauthorisely drawn in excess by workman. Excess amount was paid to Shri B.N.Roy to disburse amount to the workers at rescue station. Shri B.N.Roy was not having Bank Account. Other details are given by the witness.

9. Management witness in his cross-examination says tampering had not occurred in his presence. As per procedure payment is made through account. If any overwriting is made, signature of competent authority is required. The documents for which tampering was committed those original documents are not produced. He could not say who committed tampering. He claims ignorance whether opinion of handwriting expert was taken. Chargesheet was issued to Shri Vivekanand, vijay Kumar, A.K.Mukherjee. he was unable to tell what punishment was imposed against him if all of them were reinstated. Management's witness was unable to tell the amount of any employee. After tampering, amount was deposited by workman in his account. Management did not examine any other witness. Documents alleged to have tampered are not produced. The evidence of management's witness is not sufficient to prove the charges against workman. The amount alleged to have been embezzled is also not proved. For above reasons, I record my finding in Point No.1 in Negative.

10. Point No.2- In view of my finding in Point No.1, charges alleged against workman are not proved by management, question arises whether workman is entitled for reinstatement with full back wages. As charges against workman are not proved, the punishment of his dismissal cannot be sustained. Workman is therefore entitled for his reinstatement. With regard to claim for back wages, there is no cogent evidence adduced by either parties whether workman was in gainful employment when no cogent evidence is adduced by workman about his unemployment during whole period. Considering above

aspects, in my considered view reinstatement of workman with 50 % back wages would be appropriate. Accordingly I record my finding in Point No.2.

11. In the result, award is passed as under:-

(1) The action of the management of Mines Rescue Station, SECL, Mahendragarh in dismissing Shri Dilip Kumar Bannerjee, Cashier Grade-I from service w.e.f. 25-12-95 is not legal and proper.

(2) Hind party is directed to reinstate workman with continuity of service with 50 % back wages.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2014

का.आ. 2775.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वेस्टर्न कोलफील्ड्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 247/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.10.2014 को प्राप्त हुआ था।

[सं. एल-22012/351/1998-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 14th October, 2014

S.O. 2775.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 247/1999) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of WCL, and their workmen, received by the Central Government on 14.10.2014.

[No. L-22012/351/1998-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/247/99

PRESIDING OFFICER:

SHRI R. B. PATLE,

The Secretary,
RKKMS(INTUC),
Po Chandametta,
Distt. Chhindwara (MP)

...Workman/Union

Versus

Manager,
Ambara Colliery of WCL,
PO Ambara,
Distt. Chhindwara (MP)

...Management

AWARD

Passed on this 22nd day of September 2014

1. As per letter dated 7-7-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-22012/351/98-IR (CM-II). The dispute under reference relates to:

“Whether the action of the management of Western Coalfields Ltd. Kanhan Area i.e. Manager, Ambara Colliery, WCL, Kanhan Area PO Ambara Distt. Chhindwara (MP) in not giving notional fixation to Shri Chetanram S/o Roopram, Explosive Carrier of Ambara Colliery (declared medically unfit for tub loader job) as per settlement dated 2-11-92 arrived at before RLC, Nagpur is justified? If not, to what relief the workman concerned is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at page 3/1 to 3/6. Case of Ist party workman is that he is employed as explosive career in Category II as per NCWA. Previously workman was working as tub loader in Ambara Colliery of WCL. As per NCWA, job description of the post of tub loader is piece rated job and loaders used to work in groups and are being paid group wages. The Tub loaders get basic as well as emoluments more than the workers working in Category I, II or III of NCWA. The tub loader was getting wages of Group V. workman was drawing wages of tub loader. On 13-6-89, workman was employed in 3rd shift of Ambara underground mine. During course of employment, he suffered mining injury, fracture to right leg ankle. Workman was referred to WCL Hospital, Kanhan Area. Thereafter he was referred to Permanand Rehabilitation Centre at Chhindwara. Workman was receiving treatment for 18 months and discharged from rehabilitation centre on 10-10-90. Permanent disability of workman was assessed 8 %. He was paid compensation under workman Compensation Act and clause 9.21 of NCWA.

3. That workman was referred to Medical Board for assessing his fitness for alternate job. Workman was found unfit for loaders job. He was recommended light job on surface as General Mazdoor Category I. workman was declared fit for alternate job. He was allowed conversion from piece rated to time rated in Category I from 9-1-91. That as per NCWA, the employees declared medically unfit from the post is converted from one category to other. His

basic wage is protected. Workman was denied protection of wages of tub loader after his conversion to Category I Mazdoor. Thereafter workman was promoted as Explosive Career Category II on 9-1-94. Workman submits as per settlement dated 2-11-92, he is entitled for pay protection. He was denied notional fixation of Category I taking group wages of tub loader. On such ground, workman is praying that he may be granted notional fixation after he was declared medically unfit for job of tub loader.

4. IInd party filed Written Statement at Page 5/1 to 5/6. Claim of workman is denied. IInd party submits that workman was working as tub loader in Ambara Colliery, Kanhan Area. He met with an accident on 15-6-89. Workman was provided medical treatment at expense of the company. He was examined by Medical Board. His permanent disability was assessed 7 %. Workman had executed memorandum of agreement in Form L. workman received compensation. He had submitted application giving option for alternate employment. Workman was deployed as General mazdoor because of the option given by him. Workman was promoted as Explosive career Category II from 9-1-94. Workman is paid wages of said category. It is reiterated that workman was working as tub loader. He suffered with accident and after examination by Medical Board, his permanent disability was assessed 7 %.

5. Claim of Ist party workman as per settlement dated 2-11-92 is denied. It is submitted that said subject matter was discussed in conciliation proceedings with reference to piece rated workers, time rated jobs. The note of discussion is reproduced. That all such piece rated workman given option for time rated, monthly rated jobs will be fixed in the middle of commensurate category for which they ought. No personal pay is allowed. Such piece rated workman may put in time rated monthly rated in future by managerial decision. Rest of the contentions of workman are denied.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- (i) Whether the action of the management of Western Coalfields Ltd. Kanhan Area i.e. Manager, Ambara Colliery, WCL, Kanhan Area PO Ambara Distt. Chhindwara (MP) in not giving notional fixation to Shri Chetanram S/o Roopram, Explosive Carrier of Ambara Colliery (declared medically unfit for tub loader job) as per settlement dated

2-11-92 arrived at before RLC, Nagpur is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

7. Ist party workman has raised dispute for denial of notional fixation of his wages after he was declared unfit for tub loader job and conversion allowed for job of General Mazdoor. The claim is denied by IInd party.

8. Workman filed affidavit of his evidence supporting his contentions in statement of claim. That he was working as tub loader. He suffered minor injury on 13-6-89. He was receiving treatment in rehabilitation centre for 18 months. He was discharged on 9-10-90. He was examined by Medical Board and found unfit for job of tub loader. He was allowed conversion to the post of General Mazdoor. Notional fixation was not allowed to him. On 9-1-94, he was promoted as explosive career Category II. In his cross-examination workman says he is working as Explosive Career Category IV. He was appointed as tub loader working underground. It is heavy work. Job of General Mazdoor is light, work of tub loader is piece rated. After accident on 14-6-89, he was admitted in hospital. He was examined by Medical Board- permanent disability of 8 % was considered. He was allowed alternate job as General Mazdoor. He was promoted as Explosive career category II on 9-1-94. At the time of conversion, his wages for tub loader were not considered.

9. The documents produced by workman Exhibit W-1 to W-7 are relating to his treatment and injury reports. Exhibit W-8 is certificate of medical board. Workman was found fit for alternate job on surface as General Mazdoor on 9-2-91. Workman was found unfit for job of loader. Exhibit W-9 is order of promotion of workman and others dated 9-1-94. Exhibit W-10 is copy of settlement dated 1-10-92 settled before ALC. Demand No.1 agreed between Union and management provides that management shall provide alternate job to the employees particularly loaders who are physically weak due to their old age, sickness irrespective of vacancies. Clause 1.3 reads management shall on conversion from PR to TR/MR will fully protect the group wages including SPRA wherever applicable. The basic pay so fixed in the TR/MR category grade if exceeds the maximum of the category grade, the balance will be treated as personal pay to the person concerned which shall be adjusted in the subsequent revision of pay/promotion. Exhibit W-10 is admitted by management. Workman was denied its benefit.

10. The evidence of management's witness Shri P.K. Tripathi supporting contentions of management. Management's witness stated w.e.f. 9-9-94, on completion

of date of regularisation, workman is paid wages of Category II. The modification will be prospective and piece rated workman who had come in time rated monthly rated category have already been paid till 30-10-95. According to Tripartite settlement dated 2-11-92 with RKKMS, note of discussion dated 17-7-93 will continue to be paid as per item No. 1.3 of settlement. Management's witness in his cross-examination says he was not working in Ambara Sub area during 84 to 94. The provisions of NCWA are applicable to IInd party. Workman is promoted as Explosive career Category II from 19-1-94. Workman was paid wages of said category. Workman was not allowed pay protection at the time of conversion.

11. Management produced documents Exhibit M-2 to M-7. Workman had given consent vide Exhibit M-1. That he was ready to work as General Mazdoor. That he had no objection receiving basic wages of Category I. when document Exhibit W-10 clearly provides for protection of wages at time of conversion obtaining such undertaking from workman by management cannot be said proper. For above reasons, I record my finding in Point No.1 in negative.

12. Point No.2- from evidence of workman and documents Exhibit W-10 reproduced supra, workman is entitled to protection of wages of the post of tub loader. Accordingly I record my finding in Point No.2.

13. In the result, award is passed as under:-

- (1) The action of the management of Western Coalfields Ltd. Kanhan Area i.e. Manager, Ambara Colliery, WCL, Kanhan Area PO Ambara Distt. Chhindwara (MP) in not giving notional fixation to Shri Chetanram S/o Roopram, Explosive Carrier of Ambara Colliery is not legal.
- (2) IInd party is directed to allow protection of wages of post of tub loader of workman from the date of his conversion to post of General Mazdoor Category I. Difference of wages be paid to workman within two months from date of publication of award.

In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

14. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2014

का.आ. 2776.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम

न्यायालय, असनसोल के पंचाट (संदर्भ सं. 92/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.10.2014 को प्राप्त हुआ था।

[सं. एल-22012/524/1999-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 14th October, 2014

S.O. 2776.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 92/2000) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of ECL, and their workmen, received by the Central Government on 14.10.2014.

[No. L-22012/524/99-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT:

Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 92 OF 2000

PARTIES:

The management of Parasia O.C.P of M/s. ECL

Vs.

Sri Pradeep Kundu

REPRESENTATIVES:

For the Management : Sri. P.K. Das, Ld. Adv.

For the Union (Workman) : None

INDUSTRY: COAL STATE: WEST BENGAL

Dated – 25.09.14

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/524/99-IR(CM-II) dated 19.09.2000 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“ Whether the action of the management of M/s. Eastern Coalfields Ltd. in dismissing the services of Sh. Pradeep Kundu, U.G. Loader, is legal

and justified? If not, to what relief the workman is entitled ?”

Having received the Order of Letter No. L-22012/524/99/IR(CM-II) dated 19.09.2000 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. 92 of 2000 was registered on 27.09.2000 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On Perusal of the case record I find that my predecessor (Late Jayanta Kumar Sen, the then P.O.) had reserved this case for an award because the union neither appeared nor took any step since long despite registered notices. It seems that the workman is now no more interested to proceed with the case further. The case is also too old - in the year 2000. I find no reason to keep this old record pending. As such the case is closed and accordingly a ‘No Dispute Award’ may be passed.

ORDER

Let an “Award” be and the same is passed as “No Dispute” existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for needful information. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2014

का.आ. 2777.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, असनसोल के पंचाट (संदर्भ सं. 86/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.10.2014 को प्राप्त हुआ था।

[सं. एल-22012/48/2000-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 14th October, 2014

S.O. 2777.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 86/2000) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of ECL, and their workmen, received by the Central Government on 14.10.2014.

[No. L-22012/48/2000-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
ASANSOL****PRESENT:**

Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 86 OF 2000**PARTIES:**The management of Shyamsunderpur Colliery,
Bankola Area of M/s. ECL**Vs.**

Koyala Mazdoor Congress

REPRESENTATIVES:

For the management : Sri. P.K. Das Ld. Adv.

For the union (Workman) : S. K. Pandey, Gen. Secy.
of the union

INDUSTRY: COAL STATE: WEST BENGAL

Dated: 22.09.14

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/48/2000/IR (CM-II) dated 12/15.09.2000 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“ Whether the action of the management of Shyamsunderpur Colliery of Bankola Area of M/s. Eastern Coalfields Ltd. in not fixing the workload/ rate of tramming and not reviewing the same periodically as per clause 3.7.1 of NCWA V is legal and justified ? If not, to what relief the workmen are entitled ?”

Having received the Order of Letter No. L-22012/48/2000/IR (CM-II) dated 12/15.09.2000 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. 86 of 2000 was registered on 27.09.2000 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Sri P. K. Das, Ld. Adv. for the management and Sri S. K. Pandey, representative of the union are present. Both of them pray to close this case as the workman do not want to proceed with the case further. On perusal of the case record I find that a petition has been filed on behalf of the workman with the request to close the case. As such the case is closed and accordingly a ‘No Dispute Award’ may be passed.

ORDER

Let an “Award” be and the same is passed as “No Dispute” existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for needful information. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2014

का.आ. 2778.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, असनसोल के पंचाट (संदर्भ सं. 40/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.10.2014 को प्राप्त हुआ था।

[सं. एल-22012/280/1998-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 14th October, 2014

S.O. 2778.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/1999) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of ECL, and their workmen, received by the Central Government on 14.10.2014.

[No. L-22012/280/1998-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
ASANSOL****PRESENT:**

Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 40 OF 1999**PARTIES:**

The management of Khas Kajora Colliery, ECL

Vs.

Late Smt. Bijali Mejhian

REPRESENTATIVES:

For the management : Sri P. K. Das, Ld.
Advocate

For the union (Workman) : Sri S. K. Pandey,
General Secretary

INDUSTRY: COAL STATE: WEST BENGAL

Dated : 18.09.2014

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/280/98/IR (CM-II) dated 05.05.1999 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Khas Kajora Colliery, Kajora Area of M/s. ECL in not providing employment to the dependent of Late Smt. Bijali Mejhian, Ex-Wagon Loader, is legal and justified ? If not, to what relief is the dependent of the ex-workman entitled ?”

Having received the Order No. L-22012/280/98/IR (CM-II) dated 05.05.1999 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 40 of 1999 was registered on 07.06.1999. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

Written statement filed by the dependent of Late Smt. Bijali Mejhian, he has stated that Smt. Bijali Mejhian was a permanent employee of Khas Kajora Colliery, having her designation as Wagon Loader, Identity Card No. 13597 Form ‘B’ No. 548 and CMPFA/C. No. B/593160. Late Smt. Bijali Mejhian died on 21.12.1995 while she was in service. Deputy Medical Superintendent of Khas Kajora Colliery has issued Death Certificate of Smt. Bijali Mejhian on 21.12.1995. In terms of provisions contained in clause 9.4.2 of NCWA-IV and NCWA-V. As per NCWA agreement the dependent of deceased employee is entitled for employment in the company and accordingly her son Sri Deb Prasad Manjhi applied for employment and submitted all relevant papers and documents. The husband of Late Smt. Bijali Mejhian named Bijoy Prasad pre-deceased her on 26.06.1989. Except Sri Deb Prasad Manjhi no other member is dependent on Late Smt. Bijali Mejhian. After

laps of 2 years, offer of employment not given to the dependent of Late Smt. Bijali Mejhian. Therefore Koyala Mazdoor Congress, being a registered trade union raised an Industrial Dispute before the ALC(C), Raniganj on 17.02.1998. The said dispute failed. It has been prayed the Tribunal may kindly direct the management of Khas Kajora Colliery to provide employment to Sri. Deb Prasad Manjhi the dependent of the deceased and management should also be directed to pay adequate compensation for the abnormal delay in disposing the claim.

On other hand management has stated in his written statement that instant reference is bad in the eye of law. The reference is entirely misconceived one and cannot constitute any industrial dispute. Management has stated in his written statement that Late Smt. Bijali Mejhian was a permanent employee of the Khas Kajora Colliery, she was working as ex-wagon loader in the said colliery. Smt. Bijali Mejhian during her service submitted an application for V.R. under F.V.R. scheme in January 1995, nominating a person alleging him to be Sri Deb Prasad Manjhi as her son. In the meantime another person claiming himself to be Sri Deb Prasad Manjhi applied for employment. His application forwarded to the Chief Vigilance Officer, ECL HQ, and the matter was taken by the Vigilance department. Meantime Smt. Bijali Mejhian expired on 21.12.1995. After her death union has raised an Industrial Dispute before the ALC(C), Raniganj, on behalf of said Sri Deb Prasad Manjhi for payment of gratuity. As per direction of controlling authority the gratuity and L.C.S. of late Smt. Bijali Mejhian was paid to aforesaid Sri Deb Prasad Manjhi. Sri Deb Prasad Manjhi could not establish relationship with Late Smt. Bijali Mejhian. He failed to establish proper identification as such the claim for employment was not considered and was rejected at screening level for want of sufficient proof. The management have or had no obligation to provide employment to a fake person whose relationship was at a great doubt and suspicious. The demand of the union is purely based on misrepresentation of the fact. It is denied the offer of employment was illegally denied by the management. Management has or had no liability to provide employment to the dependent of Late Smt. Bijali Mejhian in terms of provision of class 9.4.2 of NCWA-IV. The action of the management of Khas Kajora Colliery, ECL, is totally justified in not providing employment to the dependent of Late Smt. Bijali Mejhian.

Union has produced 10 Xerox copies of the documents. Dependent of Late Smt. Bijali Mejhian, Sri Deb Prasad Manjhi has examined himself as witness. Neither any document has been filed nor any oral evidence has been adduced by the management.

I have heard the argument of Sri S. K. Pandey on behalf of the union/workman and Sri P. K. Das, Ld. Advocate on behalf of the management.

It is not disputed that deceased workman Late Smt. Bijali Mejhian was permanent employee of Khas Kajora Colliery. It is also admitted fact that Late Smt. Bijali Mejhian died while she was in service as ex-wagon loader.

Reliance has been placed by the union on NCWA agreement IV & V. As per NCWA agreement in Para 9.3.0 it is provided that in case of death of any workman while in service the dependent of workman will be provided employment. The dependent for this purpose as described in the NCWA agreement means the wife or the husband as the case may be, unmarried daughter, son and legally adopted son. if no such direct dependent is available for the employment younger brother, widowed daughter, widowed daughter in law of son in law residing with the deceased and almost wholly depended on the earning of the deceased may be considered as dependent of the deceased.

Sri Deb Prasad Manjhi has claimed job in Khas Kajora Colliery after the death of his mother Late Smt. Bijali Mejhian while she was in service. The Xerox copy of the service record of Late Smt. Bijali Mejhian has been produced by the union. This record is maintained by ECL and it has been issued by ECL. The family composition shown in the service record of Late Smt. Bijali Mejhian which is maintained by ECL Sri Vijay Dusad was her husband, Sri Deb Prasad Manjhi and Sri Madhab Chand Manjhi are sons of Late Smt. Bijali Mejhian, Smt. Santara Manjhi is married daughter of Late Smt. Bijali Mejhian. Controlling authority on the presentation of Sri Deb Prasad Manjhi, after hearing the management and Sri Deb Prasad Manjhi has passed the order for payment of gratuity to Sri Deb Prasad Manjhi, on merit. Controlling authority has passed the order on 12.09.2001. Controlling Authority, ALC(C) ordered for payment of gratuity for Rs. 53,661.60/- (Rupees Fifty Three Thousand Six Hundred Sixty One and Sixty Paise only) to Sri Deb Prasad Manjhi. Besides agent in Khas Kajora Colliery in his letter dated 14.08.2000 has admitted that as per service record Sri Deb Prasad Manjhi is son of Late Smt. Bijali Mejhian.

The general principal of law of evidence is that, he who asserts must prove. In other words the burden of proof is obligation to adduce evidence to the satisfaction of Tribunal in order to establish the existence or non-existence of a fact contained by the party.

Sri Deb Prasad Manjhi has stated in his affidavit that he was born out of wed lock between his father Sri. Vijay Dusad and mother Late Smt. Bijali Mejhian. He have been made nominee in respect of C.M.P.F accumulation of Late Smt. Bijali Mejhian. Late Smt. Bijali Mejhian died on 21.12.1995 while she was in service as wagon loader. Husband of late Smt. Bijali Mejhian, Sri. Vijay Dusad died on 26.06.1989 before the death of Smt. Bijali Mejhian. After the death Sri Madhab Chand Manjhi and

Smt. Santra Manjhi are only legal heir. Other legal heirs have given no objection in writing for providing employment to him, besides he has filed indemnity form. Sri Deb Prasad Manjhi has been cross-examined on behalf of the management. In cross-examination he has not made any statement repugnant to the statement made in the examination in-chief.

There is no piece of evidence, that Sri Deb Prasad Manjhi is not the son of Late Smt. Bijali Mejhian. I am unable to understand that when management paid entire gratuity amount to Sri Deb Prasad Manjhi as dependent of Late Smt. Bijali Mejhian. Then on what basis the management was refusing Sri Deb Prasad Manjhi to be dependent of Late Smt. Bijali Mejhian. Management has not produced the order of screening committee for non-entitlement of employment of Sri Deb Prasad Manjhi.

In view of the decision above I think it just and proper to direct management to provide employment to Sri Deb Prasad Manjhi, who is dependent of Late Smt. Bijali Mejhian in lieu of death of Smt. Bijali Mejhian

ORDER

Let an "Award" be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2014

का.आ. 2779.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, नई दिल्ली के पंचाट (संदर्भ सं. 174/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.10.2014 को प्राप्त हुआ था।

[सं. एल-22012/235/2006-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 14th October, 2014

S.O. 2779.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 174/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the Industrial Dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 14.10.2014.

[No. L-22012/235/2006-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. I,
KARKARDOOMA COURTS COMPLEX, DELHI****I.D.No.174/2011**

The President,
FCI (Handling) Worker's Union,
8654, Arakashan Road,
Paharganj,
New Delhi-110055

...Workman

Versus

The Chairman-cum-Managing Director,
Food Corporation of India,
16-20, Barakhamba Lane,
New Delhi-110001.

...Management

AWARD

Food Corporation of India (in short the Corporation) was set up by the Central Government under the provisions of Food Corporation of India Act, 1964 for the purpose of procurement, storage, preservation, salvaging, weighing, standardization, transportation and distribution of food grains through public distribution system in the country. The Corporation employs workers in its various establishments/depots, railheads and offices to do handling operations of food grains. Workers, so engaged, are of following categories:

- i. Departmentalized workers,
- ii. Direct payment system workers,
- iii. No work no pay system workers, and
- iv. Management Committee system workers

2. The management committee system of labour remained in operation till 01.11.1994. With effect from 01.11.1994, workers of management committee system were upgraded to workers of direct payment system, vide memorandum of settlement signed on that date between the Corporation and the unions, with a view to eliminate management committee system of workers from all the depots. Since 01.11.1994, management committee system of labour is not prevalent in any depot of the Corporation.

3. The Corporation got standing orders certified from the Certifying Officer, which are applicable to its establishments in North, East and NEF Zones, where departmentalized workers are employed. Certified standing orders are not made applicable to direct payment system and no work no pay system workers. FCI (Handling) Workers Union (in short the union) made efforts to claim parity in the matter of wages and fringe benefits, besides 12 days casual leave in a year, as applicable to departmentalized workers, for workers of direct payment system and no work no pay system. A demand was raised in that regard, which was not conceded to by the Corporation. Constrained by these circumstances, the

union raised a dispute before the Conciliation Officer, which dispute was contested by the Corporation. Resultantly, conciliation proceedings failed. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to Central Government Industrial Tribunal No.II, New Delhi, for adjudication, vide order No.L-22012/235/2006-IR(CM-II), New Delhi, dated 10.9.2007, with following terms of reference:

“Whether the demand of the Union for not allowing 12 days Casual Leave in a calendar year as per Certified Standing Orders to workers other than Departmentalized Labour by the Management of FCI is legal and justified ? If so, to what relief are the workmen entitled ?”

4. Claim statement was filed by the union, pleading that the Corporation employs food handling workers in the categories of departmentalized workers, direct payment system workers, no work no pay system workers and management committee system workers at its various food storage depots. Workers of the aforesaid categories are workmen within the meaning of section 2(s) of the Industrial Disputes Act, 1947(in short the Act), claims the union. The Industrial Employment (Standing Orders) Act, 1946(in short the Standing Orders Act) also defines workman as a person who falls within the ambit of ‘workman’ as defined by the Act. Therefore, all categories of employees, employed by the Corporation at its various food storage depots, are workmen. The Corporation got standing order certified under the Standing Orders Act. However, applicability of certified standing orders have been restricted by the Corporation only to category of departmentalized workers, on the strength of its letter No.IR(L)/3(1)88 dated 25.11.1999. Provisions of certified standing orders are not made applicable to the categories of workers working under direct payment system, no work no pay system and management committee system. By way of restricting applicability of certified standing orders to departmentalized workers only, the Corporation had denied benefit of 12 days casual leaves in a year to the workers working under direct payment system, no work no pay system and management committee system. The union raised a demand on the Corporation claiming parity for direct payment system, no work no pay system and management committee system of workers with departmentalized workers in the matter of casual leaves available to them. The said demand was not conceded to. Act of the Corporation in denying 12 days casual leave to other categories of workers than the departmentalized workers is denial of their legitimate rights. Under Clause 13(2)(a) of the certified standing orders, applicable in the establishment of the Corporation, a workman is entitled to 12 days casual leave in a year. The union claims that an award may be passed in favour of the workmen, falling

under the category of direct payment system, no work no pay system and management committee system, holding them entitled to 12 days casual leave in a calendar year, besides grant of 12 days wages for every calendar year with effect from the date when certified standing orders came into operation in the establishment of the Corporation.

5. Demurral was made by the Corporation, pleading that by way of present industrial dispute, relief has been claimed under the Standing Orders Act, which Act is a self contained code. Provisions of the Standing Orders Act deals with issues relating to implementation of service conditions of industrial employees under the said Act and such issues can be agitated before the forum provided there under and not before this Tribunal. Direct payment system, no work no pay system and management committee system workers are recognized by the settlements entered into between the unions and the Corporation from time to time. The union filed a writ petition, being WP(C) No. 422 of 2000 in the Apex Court, seeking wages at par with departmentalized workers for direct payment system, no work no pay system and management committee system workers, employed at 223 depots of the Corporation. The Apex Court, vide its order dated 05.04.2002, ruled that justification and expediency of continuance of direct payment system of labour, recognized by various settlements, is to be looked into and facts of the dispute raised by the union can be raised before an industrial adjudicator under the Act. At present, the said dispute is sub-judice before the National Industrial Tribunal Mumbai as ID No.1/2003 wherein parity in wages and fringe benefits for direct payment system, no work no pay system and management committee system workers have been claimed to that of the wages and fringe benefits available to departmentalized labour. Proceedings in the said dispute are fixed for 03.11.2011. In view of these facts, the present dispute is incompetent.

6. As the Apex Court ruled that direct payment system is recognized labour system, the Corporation submitted draft standing orders in respect of direct payment system workers before the Certifying Officer under the provisions of the Standing Orders Act since the existing standing orders were not applicable to that category of workers. The Certifying Officer, vide his order dated 25.08.2008, granted liberty to seek modification in the existing certified standing orders, but refused to certify the draft standing orders on the ground that there cannot be two separate standing orders in one establishment. The Corporation filed an appeal against the said order before the Appellate Authority, which appeal pends adjudication. The union has also filed an appeal against the order dated 25.08.2008. FCI Workers Union has also filed an appeal against that order, which appeal is also sub-judice. The issue as to the applicability of existing certified standing orders to direct payment system workers

pends adjudication before the High Court of Delhi in civil writ petition No.1676 of 2008. In view of the aforesaid facts, present proceedings are liable to be dismissed.

7. The Corporation projects that the union, a splinter group of FCI Workers Union, is not competent to raise a dispute on behalf of direct payment system, no work no pay system and management committee system workers. The Corporation pleads that no worker under the management committee system has been engaged by it. Labour system such as departmentalized workers, direct payment system and no work no pay system are recognized and governed by the settlements signed between it and the labour unions from time to time. The Corporation disputes that workers of the category of direct payment system, and no work no pay system are eligible to get 12 days casual leave in a year. It has been claimed that the dispute raised is not legally competent, hence it may be dismissed.

8. Vide order No.Z-22019/6/2007-IR(C-II) dated 30.03.2011, the appropriate Government transferred the dispute to this Tribunal for adjudication.

9. Shri Mehboob Alam and Shri Hari Kant Sharma entered the witness box to testify facts on behalf of the union. Shri Tej Singh gave evidence on behalf of the Corporation. No other witness was examined by either of the parties.

10. Arguments were heard at the bar. None appeared on behalf of the union to advance arguments on its behalf. Shri Om Prakash, authorized representatives, advanced arguments on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows:

11. In its written statement, the Corporation pleaded that a dispute is sub-judice before the National Industrial Tribunal, Mumbai, as ID No.1/2003 wherein parity in wages and fringe benefits for direct payment system, no work no pay system and management committee system workers have been claimed to that of wages and fringe benefits available to departmentalized labour. It has been contended by the Corporation that 12 days casual leave in a calendar year is part of fringe benefits, in respect of which dispute has been referred for adjudication to National Industrial Tribunal, Mumbai. Out of its pleadings, Corporation wants to project that on a dispute being referred for adjudication to the National Industrial Tribunal, this Tribunal cannot exercise its jurisdiction over the matter, since the present dispute shall be deemed to have been quashed on reference of dispute being made to the National Industrial Tribunal, Mumbai. Issues so raised by the Corporation were considered and adjudicated by this Tribunal vide order dated 22.09.2011 wherein findings were recorded against the Corporation, which findings have been extracted hereunder:

“9. Sub-section (1A) of section 10 of the Act empowers the Central Government to refer an “industrial dispute” or any matter appearing to be connected with or relevant to that dispute in the Second Schedule or Third Schedule to a National Industrial Tribunal for adjudication irrespective of the fact whether or not it is the “appropriate Government” in relation to that dispute. But before the Central Government can make a reference, it must have formed its opinion that:

(1) There is a dispute which satisfies the requirement of an industrial dispute as defined in section 2 (k) of the Act.

- (i) Such industrial dispute exists or is at least apprehended at the time of making the reference,
- (ii) Such dispute (a) involves any question of national importance, or (b) is of such a nature that industrial establishment situated in more than one State are likely to be interested in or affected by such dispute, and

(2) The dispute should be adjudicated upon by a National Tribunal.

10. Provisions of sub-section (6) of section 10 of the Act are devised with a view to avoid multiplicity of proceedings which may result from a reference to the National Tribunal. The provisions contained therein bar adjudication upon any matter by a Labour Court or Industrial Tribunal, when such a matter has been referred for adjudication to a National Tribunal under sub-section (1A) of section 10 of the Act. Non-obstante clause makes it implicit that irrespective of the other provisions of the Act, it is the National Tribunal alone which will be seized of the matter referred to it to the complete exclusion of adjudication by other adjudicatory authorities under the Act.

11. Provisions of clause (a) of sub-section (6) of section 10 of the Act contemplate that if the matter referred to the National Tribunal under sub section (1A) is at the time of such reference pending in or before a Labour Court or Industrial Tribunal, the proceedings before such Labour Court or Tribunal, as the case may be, in so far it relates to such matter shall be deemed to have been quashed. Sub clause (b) of the aforesaid section bars the appropriate Govt. from making a reference to a Labour Court or an Industrial Tribunal for adjudication during the pendency of the proceedings in relation to such matter before the National Tribunal. The effect of the said clause is that if a such matter is referred to adjudication, the order of reference shall be void ab initio and the Labour Court or the Industrial Tribunal shall have no jurisdiction to proceed with the adjudication.

12. Whether provisions of sub-section (6) of section 10 of the Act come in to play, in the present controversy? As noted above the appropriate Govt. referred the dispute of workers working under Direct Payment System, No Work No Pay System and Management Committee System relating to their entitlement for same pay and other benefits as are available to the departmentalized labour in various depots of the Corporation through out the country. The reference order makes it clear that the workers of above categories claim parity with departmentalized labour for their pay and other benefits. Claim filed before the National Tribunal projects that the parity in pay and other benefits is demanded on account of similar work and responsibilities performed by them. The expression “other benefits” would certainly encompass casual leave in it. In the reference under consideration the Handling Union demands for 12 days causal leave in a calendar year as per Certified Standing Orders to the workers other than departmentalized labour.

13. Whether reference orders, referred above, project that the National Tribunal as well as this Tribunal are going to adjudicate upon one and the same matter. In the reference before the National Tribunal claim of pay and other benefits is based on parity with the departmentalized labour. Therefore the cause of action or apprehension of an industrial dispute was perceived by the appropriate Govt. as to be based on demand relating to parity of pay and other benefits with that of the departmentalized labour. Hence it is clear that the National Tribunal is seized with a dispute which is based on a claim seeking parity in pay and other benefits with departmentalized labour. The present reference makes it clear that the Handling Union demands twelve days causal leave in a calendar year to workers other then departmentalized labour, in pursuance of Certified Standing Orders. Therefore the dispute under reference, though relating to 12 days causal leave, which forms part of other benefits, is based on the Certified Standing Orders, framed under the Industrial Employment (standing Orders) Act, 1946, Certified Standing Orders have force of law. It may encourage any one to say that the claim before this Tribunal is based on service conditions, guaranteed by the Standing Orders.

14. Law recognizes a right in favour of a litigant to base his case on all or any one of the causes of action available to him. Different causes of action may arise in favour of a party, when some wrong has been caused to him. For example, if one is dispossessed from his immovable property he may sue his opponent for possession under section 6 of the Specify Relief Act, 1963, may also sue, based on

previous possession and not on title as contemplated by Article 64 and can also maintain a suit for possession based on title as enacted by Article 65 of the Limitation Act, 1963. He can maintain suit for possession of the said immovable property on above causes of action, which are independent of each other. Likewise a landlord may seek possession of the tenanted accommodation from his tenant on different grounds, enacted under the tenancy laws. There would be no bar to different suits or petitions to seek possession of the immovable property or tenanted premises, as the case may be. In the same manner demand of 12 days casual leaves in a calendar year is based on different propositions viz. (I) parity with the departmentalized labour, and (II) based on service conditions, guaranteed by the Certified Standing Orders.

15. Whether claim of 12 days casual leave in a calendar year as per Certified Standing Orders was preferred to the National Tribunal for adjudication? As detailed above, claim of pay and other benefits in parity with departmentalized labour was referred for adjudication to the National Tribunal. Would claim of 12 days casual leave as per Certified Standing Orders fall within to ambit of “such matters”, as provided in sub-clause (b) of sub section (6) of section 10 of the Act? For an answer it would be expedient to construe the above phrase used in sub-section (6), which is reproduced thus:

“(6) Where any reference has been made under sub-section (1A) to a National Tribunal then notwithstanding anything contained in this Act, no Labour Court or Tribunal shall have jurisdiction to adjudicate upon any matter which is under adjudication before the National Tribunal, and accordingly,—

(a) If the matter under adjudication before the National Tribunal is pending in a proceeding before a Labour Court or Tribunal, the proceeding before the Labour Court or the Tribunal, as the case may be, in so far as it relates to such matter, shall be deemed to have been quashed on such reference to the National Tribunal; and

(b) It shall not be lawful for the appropriate Government to refer the matter under adjudication before the National Tribunal to any Labour Court or Tribunal for adjudication during the pendency of the proceeding in relation to such matter before the National Tribunal”.

16. “Such matter” is key note of above two clauses of sub-section (6) of section 10 of the Act. Since the provisions of aforesaid two clauses oust jurisdictions of the adjudicatory authorities as well as of the appropriate Govt., as the case may be, hence are to be construed strictly. Therefore the

phrase “such matter” which has been referred for adjudication to a National Tribunal would include the matter which was under consideration before the Central Govt., when it formed opinions as contemplated by sub-section (1A) of section 10 of the Act. The matter which was not under consideration before the Central Govt. and not referred for adjudication fall outside the purview of the phrase “such matter”. Any matter, which creeps subsequently and is distinct and different than the matter referred for adjudication to the National Tribunal, would not fall within the ambit of phrase “such matter” as used in sub clause (b) of the aforesaid sub-section.

17. At the cost of repetition, it is said that the matter relating to demand of 12 days casual leave, as per Certified Standing Orders, is not pending adjudication before the National Tribunal. On this cause of action, the Handling Union has raised a demand and apprehending existence of an industrial dispute, it was referred to this Tribunal for adjudication. This dispute does not fall within the mischief of the phrase “such matter”, as used in sub clause (b) of sub-section (6) of section 10 of the Act. Hence neither sub clause (b) nor sub-clause (a) of aforesaid sub-section has any application. The dispute referred to this Tribunal is distinct and different to the dispute which has been referred for adjudication to the National Tribunal. The appropriate Govt. was competent to make a reference of the dispute to this Tribunal for adjudication.”

12. Next count of attack was made by the Corporation, pleading that issues relating to implementation of service conditions of industrial employees are to be governed under the Standing Orders Act, when Certified Standing Orders have been certified for the establishment of the Corporation. The Standing Orders Act is a self contained Code and issues which fall within the purview of Standing Orders Act can be agitated before the forum provided by the said Act and not before this Tribunal. This contention, raised by the Corporation, would be addressed to in the light of the provisions of Standing Orders Act.

13. The Standing Orders Act was brought over the Statute Book with an object to have a uniform standing orders providing for matters enumerated in the schedule to the said Act. Once standing orders for an establishment come into force, there should not be different conditions of service for those who are employed before and those employed after the standing orders came into operation. Once the Standing Orders come into force, they bind all those in the employment of the concerned establishment. The purpose of the Standing Orders Act is to require employers to define with certainty conditions of service in their establishment, to reduce them to writing and to get

them compulsorily certified with a view to avoid unnecessary industrial dispute. Of course, it is always desirable that such conditions be formally laid down and expressed with as great precision as possible.

14. Section 1 of the Standing Orders Act specifies that the said Act applies to whole of India to every industrial establishment wherein 100 or more workmen are employed or were employed on any day of the preceding 12 months when the Act came into force. Section 2 of the Act provides dictionary for the words such as Appellate Authority, appropriate Government, Certifying Officer, employer, industrial establishment, prescribed, standing orders, trade union, wages and workmen. Section 3 of the said Act casts an obligation on an employer to submit draft standing orders, proposed by him for adoption in the industrial establishment, to the Certifying Officer. Section 4 lays down conditions for certification of standing orders while section 5 casts a duty on the Certifying Officer to examine the question of fairness of the standing orders and thereafter to certify it after following procedures provided therein.

15. Section 6 of the Standing Orders Act creates a right of appeal against the order of the Certifying Officer, besides duties of the Appellate Authority to dispose of that appeal. Section 7 deals as to from which date standing orders would come into operation. Section 8 details that on being certified, Certifying Officer shall file copy of standing orders in the register kept for that purpose. Section 9 provides that text of the Certified Standing Orders shall be prominently posted by the employer on special boards to be maintained for that purpose. Section 10 of the said Act details duration for which certified standing orders shall remain in force and as to how the same shall be modified.

16. Section 10 A of the said Act deals with right of subsistence allowance in favour of a workman suspended, pending investigation or enquiry into the complaint or charges of misconduct against him. Section 11 vests Certifying Officer and the Appellate Authority with powers of Civil Court for the purpose of receiving evidence, administering oath, enforcing attendance of witnesses and compelling discovery and production of documents, while dealing with application for certification of standing orders or an appeal against the orders of the Certifying Officer. Section 12 puts an embargo on oral evidence to be given in contradiction of standing orders certified under the said Act. Section 12A details that Model Standing orders shall have temporary application till standing orders are finally certified by the Certifying Officer.

17. Section 13 of the Standing Orders Act defines penalties and procedure for imposition of those penalties when an employer violates provisions of section 3 of section 10 of the said Act. Section 13 A enables an employer or workman or trade union to refer a question for adjudication to any one of the labour court relating to

application or interpretation of standing order certified under the said Act. Section 13B of the said Act details that provisions of the Standing Orders Act shall not apply to certain industrial establishments, specified therein. Section 14 empowers an appropriate Government to exempt conditionally or unconditionally any industrial establishment from all or any of the provisions under the said Act. Section 14A empowers the appropriate Government to delegate its powers to the State Government or any officer or authority, as the case may be. The State Government may also delegate its powers to any officer or authority, as may be specified by way of notification. Section 15 of the said Act empowers the appropriate Government to make rules in respect of situations detailed therein.

18. As noted above, Standing Orders Act, deals with the proposition as to how standing orders would be certified by Certifying Office. It has also been provided therein that till standing orders are got certified by an employer for its establishment, Model Standing Orders would be applicable in that establishment. It has also been detailed therein that parties have right of appeal against the orders of the Certifying Officer and the Appellate Authority would deal with the appeals raised by the workman or employer, as the case may be. The period for which the standing order, certified by the Certifying Officer, shall remain in operation has been detailed in the Standing Orders Act. How standing orders can be modified is an area which has been dealt with by the Standing Orders Act. In case of violation of provisions of sections 3 and 10 of the Standing Orders Act, an employer may be prosecuted and punished in accordance with the procedure laid therein. These propositions make it apparent that the Standing Orders Act is a complete Code for the purpose of requiring an employer to define conditions of service in respect of his industrial employees with certainty, to reduce them in writing and to get them compulsorily certified. In case of a dispute relating to interpretation or application of standing orders, certified under the said Act, parties have been vested with a right to refer that question to a labour court constituted under the Act. Thus, it emerges that dispute relating to application or interpretation of the standing orders, certified under the Standing Orders Act, may be raised by a workman or an employer, as the case may be, before a Labour Court constituted, under the Act.

19. In the present controversy, a dispute has been raised by the union claiming 12 days casual leave in a calendar year for workers of direct payment system and no work no pay system. Gravamen of the dispute is as to whether denial of 12 days casual leaves in a calendar year as per Certified Standing Orders to the aforesaid category of employees is legal and justified. A right has been claimed by the union in favour of its members relating to applicability of standing orders, got certified by the

Corporation, for its depots in North, East and North East Frontier Zones. Such a right has been accorded by section 13A of the Standing Orders Act in favour of the workman or a trade union or the employer, which authorize them to refer a question relating to application or interpretation of standing orders to any one of the Labour Courts constituted under the Act. Resultantly, contention raised by the Corporation that dispute cannot be raised before this Tribunal, constituted under provisions of the Act, is uncalled for.

20. The Corporation projects that a draft standing orders, enumerating conditions of services applicable to workers of direct payment system, was filed before the Certifying Officer for certification. The Certifying Officer rejected its request vide its order dated 25.08.2008. However, liberty was granted to seek modification in the existing certified standing orders. An appeal was filed by the Corporation before the Appellate Authority. The union also filed an appeal against the said order, besides an appeal preferred by FCI Workers union. The Corporation agitated that in view of pendency of those appeals, dispute raised for adjudication to this Tribunal is incompetent.

21. During the course of adjudication, appeals, preferred by the Corporation, union and the FCI Workers Union, were disposed off by the Appellate Authority under the Standing Orders Act, vide its orders dated 17.10.2012. The Appellate Authority ruled that workers of direct payment system squarely fell within the ambit of definition of 'workman' as given by section 2(s) of the Act. The Appellate Authority also concluded that the standing orders of the Corporation are applicable to all its units, hence direct payment system workers are already covered by the definition of workman given in the certified standing orders. He ruled that it does not seem to be appropriate to have a separate standing orders for direct payment system workers. In view of above decision, direct payment system workers are held to be workmen within the ambit of Standing Orders Act and standing orders certified on 27.02.1998 and modified/approved on 31.08.1999 in the appeal are applicable to such employees.

22. In view of the orders passed by the Appellate Authority, it became crystal clear that the appeals raised by the Corporation, union and the FCI Workers Union under section 6 of the Standing Orders Act were disposed off by the Appellate Authority, vide its order dated 17.10.2012. The above adjudication by the Appellate Authority takes away the objection raised by the Corporation in that regard. Therefore, contention to the effect that due to pendency of the appeal, present reference was not competent, is found to be untenable.

23. The Corporation pleads that the union, being a splinter group of FCI Workers Union is not competent to

raise the present dispute. Facts to the effect that the union is a splinter group of FCI Workers Union are not dispelled. Now, it would be considered as to whether the union is competent to raise the dispute. For an answer, law is to be taken note of. In Food Corporation of India [1995 (71) FLR 278], the Apex Court was confronted with a proposition as to how representative character of a trade union would be determined. In that case Food Corporation of India and the unions, representing the workmen in the establishment of Food Corporation of India, have agreed to follow "secret ballot system" for assessing the representative character of the trade unions. The Apex Court laid down as to how the method of secret ballot should be tailored to yield correct results. The Court ruled therein that the union/unions obtaining the highest numbers of votes in the process of election shall be given recognition by the Food Corporation of India for a period of five years, from the date of conferment of the recognition.

24. In All Orissa State Bank Officers case [1999 (1) DLR 271], the Orissa High Court rules that a recognized union, who has numerical support to represent and to speak on behalf of all workmen, has a right to represent the entire body of workmen. An unrecognized union has no right to represent the entire body of the workmen, but it may speak for or represent workmen, who are its members individually or as a group. In case of any conflict between demands of recognized union and demands of an unrecognized union the management can accept views of the recognized union but the management cannot deny or refuse to entertain any representation from or to enter into any dialogue or discussion with an unrecognized union in respect of grievances of any individual workman or a group of workmen belonging to the unrecognized union. Relying on the precedent in Balmer Lawrie Workers Union (AIR 1985 SC 311) the High Court ruled that acceptance of a demand on discussion over a demand is not the one and the same thing. Right of raising grievance and discussion is a fundamental right, which cannot be taken away totally. The High Court noted observation of the Apex Court in the precedent, referred above, with profit, which observations are extracted thus:

"...Forming an Association is entirely independent different from its recognition. Recognition of a union confers rights, duties and obligations. Non-conferring of such rights, duties and obligations on a union other than the recognized union does not put it in an inferior position nor the charge of discrimination can be entertained. The members of a non-recognised association can fully enjoy their fundamental freedom of speech and expression as also to form the association.

The Legislature has in fact taken note of the existing phenomenon in trade unions where there would be unions

claiming to represent workmen in an undertaking or industry other than recognized union. Section 22 of 1971 Act confers some specific rights on such non-recognized unions, one such being the right to meet and discuss with the employer the grievances of individual workman. The Legislature has made a clear distinction between individual dispute affecting all or a large number of workmen. In the case of even an unrecognized union it enjoys the statutory right to meet and discuss the grievance of an individual workman with the employer. It also enjoys the statutory right to appear and participate in a domestic or departmental enquiry in which its member is involved. This is statutory recognition of an unrecognized union. The exclusion is partial and the embargo on such unrecognized union or individual workman to represent workmen is in the larger interest of industry, public interest and national interest. Such a provision could not be said to be violative of fundamental freedom guaranteed under Article 19(1)(a) or 19(1)(c) of the Constitution.”

25. As emerge out of the law detailed above, an unrecognized union is not entitled to be treated at par with a recognized union. However, in the case under reference, the Corporation nowhere claims that FCI Workers Union emerged as a majority union in secret ballot and recognition was accorded to it in that regard. Evidently, there are multiple trade unions operating in the establishment of the Corporation. The union is a splinter group of FCI Workers Union. When secret ballot system was not adhered to by the Corporation to assess representative character of FCI Workers Union, in that situation the Corporation cannot claim to deal with FCI Workers Union in the matter of taking a policy decision relating to service conditions of its employees. In such a situation, the union is also competent to raise issues relating to service conditions of the employees, who happen to be its members. Contention raised by the Corporation to the effect that being a splinter group of FCI Workers Union, the union is not competent to raise the dispute, is unfounded. The same is, accordingly, brushed aside.

26. On turning to facts, one may announce that the Corporation has to perform a lot of work in seasons for procurement of food grains, when stocks are procured and brought to its depots. Volume of work depends on supply of food grains for Schemes like public distribution system. There remains variation in volume of work on account of richness of crop in the country, requirements of food grains for Government Schemes and off take of food grains from depots of the Corporation in accordance with availability of foodgrains in the open market. Work of handling of food grains in depots of the Corporation is very peculiar and of seasonal in character. For the purpose of the Contract Labour (Regulation and Abolition) Act, 1970, every depot of the Corporation has been treated

as an establishment in itself by the Asnani Committee appointed by the Ministry of Labour, Government of India, New Delhi, pursuant to directions given by the Apex Court to go into the question of abolition of contract labour system in depots of the Corporation.

27. Besides departmentalized labour, the Corporation used to engage labours through contractors. When unions, working in its establishment, resorted to technique of collective bargaining, the Corporation had to eliminate the contractors and engage labours under direct payment system. Wages of the workers working under direct payment system is being revised by the Corporation after every two years on the basis of change in All India Consumer Price Index. Workers engaged under no work no pay system are not under administrative control of the Corporation. Same is the case of workers engaged under management committee system. Work is allotted to the workers of management committee, which comprises of representatives of the workmen and not of the Corporation. The Committee deploys workers and also prefer bills for quantum of work done. On receipt of payment from the Corporation, the Committee disburses it to the individual worker concerned. As per procedure agreed between the parties, the Corporation does not make payment directly to the individual workers. There has been no administrative or disciplinary control of the Corporation over workers working under management committee system. From 01.11.1994, workers of management committee system were upgraded to the status of workers of direct payment system, on the strength of settlement entered into between the Corporation and the unions.

28. Different labour systems, such as departmentalized worker, direct payment system labour and no work no pay system labour, are prevalent in the Corporation, pursuant to settlement arrived at between representatives of the unions and the Corporation, as is evidence out of settlement Ex.WW1/M2. Shri Mehboob Alam concedes in his testimony that the employees working as departmentalized workers and direct payment system workers are of two different categories. Ex.WW1/M2 substantiates that fact wherein service conditions applicable to departmentalized labour, direct payment system workers and no work no pay system workers have been distinctly delineated.

29. Shri Hari Kant Sharma admits in his testimony that conditions of services of members of union are governed by office memorandum Ex.WW1/M2. When scanned, Ex.WW1/M2 makes it clear that departmentalized workers were entitled to 12 days casual leave in a calendar year. No casual leave is admissible to worker of direct payment system. Same is the case with a worker of no work no pay system. However, Ex.MW1/W3 highlights

that a worker of no work no pay system was eligible for paid wages for three national holidays falling on August 15, January 26 and October 2 provided that he had worked immediately before and after such national holidays.

30. There has been an agitation as to whether certified standing orders are applicable to employees, other than the category of departmentalized labour. The Corporation tried to project that they were dealt under model standing orders. The evidence, so adduced, was assailed by the union. Documents Ex.MW1/W2 brought over the record by the union to present that workers of direct payment system were dealt by the Corporation under certified standing orders. Affidavits of Shri Ashok Kumar and Shri Shrawan Kumar are placed over the record by the Corporation, which documents bring it to light that in the matter of disciplinary actions, workers of direct payment system are dealt with in accordance with the provisions of model standing orders by the Corporation. These affidavits make it apparent that in Ex.MW1/W2 it was mentioned due to inadvertence that certified standing orders were applicable to the workers of direct payment system. Hence, Ex.MW1/W2 nowhere espouse the cause of the union.

31. Circular Ex.WW2/M2 was issued by Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India, New Delhi on 14.01.1998. In the said circular, Government has decided to reduce entitlement of casual leaves with effect from 01.01.1999 from existing 12 days to 8 days in a calendar year. Shri Hari Kant Sharma could not dispute existence of the said circular. Pursuant to the said circular, the Corporation issued circular 2 of 1998 dated 08.12.1998 on the strength of which casual leaves available to an employee were reduced from 12 to 8 days in a calendar year for the departmentalized workers. Shri Mehboob Alam also could not dispute issuance of the said circular, which has been proved as Ex.WW1/M8. For sake of convenience, contents of the said circular are extracted thus:

‘On the demands of the FCI Workers Union, the casual leave as well as other kinds of leave to the departmental workers were revised in terms of the Memorandum of Settlement signed on 01.11.1994 between FCI management and the representatives of FCI Workers Union revising casual leave from 7 days in a calendar year to 12 days with effect from 01.11.1994 at par with employees. Accordingly, circular under reference No.IR(L)/4(15)/94 dated 16.11.1994 has been issued revising various kinds of leave of the departmental workers. Recently, the reduction of casual leaves from 12 to 8 in a calendar year has been ordered to be implemented in respect of employees. Accordingly, the casual leave stands revised

from 12 to 8 days in a calendar year for the departmental worker also with immediate effect. This may also be brought to the notice of all concerned.”

32. As noted above, 12 casual leaves available to departmentalized labour under standing orders, proved as Ex.WW1/1, were reduced to 8 days by the Corporation on the strength of office memorandum Ex.WW1/M8. It may be a case of modification of certified standing orders Ex.WW1/1, in violation of provisions of section 10 of the Standing Orders Act. Such a situation may attract penalty specified under section 13 of the said Act. Except penalty referred above, Standing Orders Act nowhere makes provision to nullify modification of the standing orders. When provisions in the certified standing orders, as to admissibility of casual leaves in a calendar year, stood modified, the case of the union to claim parity for 12 days leaves in the matter of casual leaves for workers other than departmentalized labours goes off the track.

33. In view of reduction of casual leaves available to departmentalized labour from 12 days to 8 days in a calendar year, the union cannot seek 12 days casual leaves in a calendar year for workers of direct payment system and no work no pay system as per provisions of certified standing orders proved as Ex.WW1/1. When departmentalized workers can avail 8 days casual leave in a calendar year, it does not lie in the mouth of the union to assert that workers of direct payment system and no work no pay system are entitled for 12 days casual leave. In view of these reasons, I find no substance in the claim made by the union. The same is accordingly brushed aside. An award is passed in favour of the Corporation and against the union. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated: 06.06.2014

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2780.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सब दिविशनल अफसर (फोन्स) अजमेर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ सं. सीआईटी 54/1991) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.10.2014 को प्राप्त हुआ था।

[सं. एल-40011/03/1991-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2780.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CIT

54/1991) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jaipur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Sub-Divisional Officer (Phones) Ajmer, and their workmen, which was received by the Central Government on 17.10.2014.

[No. L-40011/03/1991-IR (DU)]

P. K. VENUGOPAL, Section Officer

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं० सी.आई.टी. 54 / 1991

रैफरेंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक एल-40011/3/91-आई.आर.(डी.यू.) दिनांक 27.09.1991

श्री बुद्धा सिंह व अन्य द्वारा वाईस प्रेसीडेंट, बी.एम.एस. 17/161, पुरानी मण्डी, अजमेर। —प्रार्थी

बनाम

सबडिवीजनल आफिसर (फोन्स) अजमेर। —अप्रार्थी

उपस्थित

पीटासीन अधिकारी: श्री हेमन्त कुमार जैन, आर.एच.जे.एस.

प्रार्थी की ओर से : श्री जुगलकिशोर अग्रवाल

अप्रार्थी की ओर से : श्री ब्रह्मानन्द सांदू

दिनांक अवार्ड : 22.09.2014

संशोधित अवार्ड

1. भारत सरकार के श्रम मंत्रालय की आज्ञा क्रमांक एल-40011/3/91- आई.आर.(डी.यू.) दिनांक 27.09.1991 से निम्न अनुसूची का विवाद “Whether the action of Sub-Divisional Officer (Phones) Ajmer in terminating the services of workmen listed at annexure ‘A’ w.e.f. 1-6-88 is Justified? If not, what relief the concerned workmen are entitled to and from the date” अधिनिर्णय हेतु इस अधिकरण को प्राप्त हुआ है।

2. प्रार्थी श्रमिक की ओर से स्टेटमेंट ऑफ क्लेम पेश कर कथन किया कि विवाद से संबंधित श्रमिकगण सर्वश्री बुद्धा सिंह, गोपाल, श्रवणसिंह, बाबू मोहम्मद, अनवर हुसैन, बख्तावर, नारासिंह, उस्मान अली एवं शकूर मोहम्मद अप्रार्थी के यहां कैजुअल श्रमिकों के रूप में कार्यरत थे। यूनियन का कथन है कि विपक्षी संस्थान ने इन श्रमिकों को वर्ष 1985, 1986, 1987 एवं मई 1988 की अवधि में कार्य पर रखा था तथा सभी ने एक वर्ष में 240 दिन से अधिक की सेवायें पूर्ण कर ली थी। प्रार्थी यूनियन का अभिकथन है कि विपक्षी द्वारा दिनांक 30.04.88 को श्रमिकगण को एक नोटिस दिया गया जिसमें यह अंकित था कि एक माह बाद उनकी सेवायें समाप्त कर दी जायेंगी। यूनियन का कथन है कि उपरोक्त अवधि में सभी

श्रमिकगण ने 240 दिन से अधिक कार्य किया है। उनका कथन है कि बुद्धा सिंह ने 368 दिन, गोपाल ने 873 दिन, श्रवण सिंह ने 727 दिन, बाबू ने 911 दिन, अनवर हुसैन ने 387 दिन, बख्तावर सिंह ने 692 दिन, शकूर मोहम्मद ने 692 दिन, रामलाल कुम्हार ने 1142 दिन, नारासिंह ने 964 दिन विपक्षी संस्थान में कार्य किया है। यूनियन का कथन है कि श्रमिकगण उक्त नोटिस दिनांक 30.04.81 से आष्वर्यचकित हुये जिसमें यह अंकित किया गया था कि उनकी सेवायें 01.06.88 से समाप्त कर दी जायेंगी, क्योंकि केबल कार्य समाप्त हो गया है। यूनियन का कथन है कि उपरोक्त श्रमिकगण से कनिष्ठ श्रमिकों को सेवा में रखा गया। यूनियन का यह भी कथन है कि कुछ श्रमिकगण ने उपरोक्त नोटिस को माननीय सर्वोच्च न्यायालय में चुनौती दी और स्थगन आदेश प्राप्त कर लिया, जिसकी प्रति पत्रावली पर पेश है। यूनियन का कथन है कि उपरोक्त नोटिस पूरी तरह औद्योगिक विवाद अधिनियम 1947 की धारा 25 एफ (ए,बी,सी) के विरुद्ध है। उनका कथन है कि ऐसे नोटिसेज के जरिये श्रमिक की सेवायें समाप्त नहीं की जा सकती थी क्योंकि श्रमिकगण ने एक कलेण्डर वर्ष में 240 दिवस से अधिक की सेवा विपक्षी के यहां पूर्ण कर ली थी। उनका यह भी कथन है कि माननीय सर्वोच्च न्यायालय द्वारा पी एण्ड टी विभाग को दैनिक वेतन भोगी एवं आकस्मिक श्रमिकों के संबंध में निर्देशित किया गया था कि विभाग ऐसे कर्मचारियों को समायोजित करने की पॉलिसी तैयार करे। यूनियन का यह भी कथन है कि इस प्रकार श्रमिकगण को सेवामुक्त किया जाना भारतीय संविधान के आर्टिकल 10,16 व 21 की उल्लंघना है। सभी श्रमिकगण गरीब परिवारों से हैं, अतः दिनांक 30.04.88 द्वारा दिये गये नोटिसेज को खारिज कर श्रमिकगण को पुनः सेवा में लिया जाकर उन्हें नियमित किया जावे तथा समस्त लाभ दिलायें जावें।

3. अप्रार्थी की ओर से स्टेटमेंट ऑफ क्लेम का जवाब पेश कर कथन किया कि श्रमिकगण एक स्पेसिफिक कार्य केबल खुदाई के अस्थायी कार्य के लिये मस्टरोल पर कैजुअल श्रमिक के रूप में रखे गये थे, जिन्हें कार्य पूरा हो जाने पर एक महीने का नोटिस देते हुये हटा दिया गया। 9 श्रमिकों में से केवल गोपाल द्वारा ही अप्रैल 85 से मार्च 88 तक लगातार तीन वर्ष तक कार्य किया गया है। केवल श्रमिक गोपाल के द्वारा ही वित्तीय वर्ष 1985-86, 86-87, 87-88 में एक वर्ष में 240 दिन तथा आधे वर्ष में 120 दिन किया गया है। अन्य किसी भी श्रमिक द्वारा लगातार तीन वर्षों तक कार्य नहीं किया गया है और न ही वित्तीय वर्ष 1985-86, 86-87, 87-88 में एक वर्ष में 240 दिन तथा आधे वर्ष में 120 दिन किया गया है। केबल खुदाई का कार्य पूर्ण होने पर श्रमिकों को एक माह का नोटिस दिनांक 30.04.88 दिया गया था। श्रमिकों का कार्य पूर्णरूपेण अस्थायी प्रकृति का था। केबल खुदाई का कार्य पूर्ण होने पर कार्य नहीं होने के कारण विभाग के पास अन्य इस प्रकृति का कार्य नहीं होने तथा इनकी विभाग में आवश्यकता नहीं होने से श्रमिकों को हटा दिया गया। अतः प्रार्थीगण का क्लेम खारिज किया जावे।

4. साक्ष्य प्रार्थी में श्रमिकगण सर्वश्री गोपाल, श्रवणसिंह, बाबू मोहम्मद, अनवर हुसैन, बख्तावर, नारासिंह, उस्मान अली एवं शकूर मोहम्मद के शपथ पत्र पेश हुये हैं, जिससे अप्रार्थी प्रतिनिधि द्वारा जिरह की गयी। अप्रार्थी की ओर से श्री प्रमोद शंकर माथुर का शपथ पत्र पेश हुआ है, जिससे प्रार्थी प्रतिनिधि द्वारा जिरह की गयी है।

5. प्रकरण में श्रमिक श्री अनवर हुसैन की मृत्यु हो जाने के कारण उसके उत्तराधिकारी किला व अन्य को न्यायाधिकरण के आदेश दिनांक 25.08.11 द्वारा पक्षकार बनाया गया।

6. उभय पक्षों की बहस सुनी गयी। प्रार्थी प्रतिनिधि द्वारा लिखित बहस पेश की गयी। पत्रावली का अवलोकन किया गया।

7. प्रार्थी के विद्वान प्रतिनिधि का कथन है कि सभी श्रमिकों द्वारा वर्ष 1985 से लेकर मई 1988 तक लगातार बिना किसी व्यवधान के अपनी सेवायें अप्रार्थी विभाग को दी हैं। सभी श्रमिकों द्वारा प्रतिवर्ष 240 दिवस से अधिक काम किया गया है। सभी श्रमिकों को दिनांक 30.04.88 को एक ही साइक्लोस्टाइल में नोटिस दिनांक 30.04.88 दिया गया है। श्रमिकों को सेवा से हटाते समय कोई छंटनी मुआवजा नहीं दिया गया और केन्द्र सरकार को भी श्रमिकों को हटाने के संबंध में सूचना नहीं दी गयी। विभाग द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 25 एफ की पालना नहीं की गयी। अप्रार्थी द्वारा 19 वर्ष बाद क्लेम का जवाब पेश किया गया है। अप्रार्थी द्वारा दिये गये जवाब में यह कहीं नहीं कहा है कि श्रमिकों द्वारा 240 दिवस काम नहीं करके इतने दिन काम किया गया है। जिरह में अप्रार्थी ने यह तक नहीं पूछा है कि सेवामुक्ति से पहले एक वर्ष में कितने दिन काम किया था। प्रदर्ष डबल्यू 13 अप्रार्थी द्वारा 278 दिन काम करने का प्रमाण पत्र है। सभी श्रमिकों द्वारा 240 दिवस से अधिक काम किया गया है। गवाह प्रमोद शंकर माथुर ने जिरह में स्वीकार किया है कि नौ श्रमिकों को जो नोटिस विभाग के द्वारा दिया गया था वह औ.वि. अधि. की धारा 25 एफ की पालना में दिया गया था। श्रमिकगणों की धारा 25एफ, जी, एच के प्रावधानों के विपरीत सेवामुक्ति की गयी है। अतः सभी श्रमिकों को पिछले समस्त वेतन व सेवालाभों के साथ पुनः सेवा में बहाल किया जावे। प्रार्थी प्रतिनिधि द्वारा अपने तर्कों के समर्थन में निम्न न्यायिक दृष्टांत पेश किये गये हैं :-

1. ए आई आर 2010 एस सी 1236 फिषरीज टर्मिनल डिवीजन बनाम भीखूबाई मेघाभाई छावदा।
2. 1984(48) एफ एल आर 310 गम्मन इंडिया लि. बनाम निरंजन दास (एस.सी.)
3. 1995(2) एस एल आर 64 बलजीत सिंह बनाम स्टेट ऑफ हरियाणा।

4. ए आई आर 1979 एस सी 75 हिंदुस्तान टिन वर्कर्स बनाम श्रमिक।

5. 1999 ए आई आर एस सी डबल्यू 892 एचएसईबी बनाम सुरेश।

6. ए आई आर 2010 एस सी 1116 हरजिंदर सिंह बनाम पंजाब स्टेट वेयरहाउसिंग का0।

7. 2012(135) एफ एल आर 613 सी सूर्याकुमारी बनाम सीजीआईटी कम लेबर कोर्ट।

8. 1979(3) एस एल आर 223 हरि पैलेस बनाम पी.ओ.

9. 1995(70) एफ एल आर 463 स्टेट ऑफ राज0 बनाम लेबर कोर्ट

10. 2001(1) एल एल एन 802 मैडीकल एजुकेशन बनाम वी. के. शर्मा

11. 2004(103) एफ एल आर 102 निक्स इंडिया टूल बनाम राम सूरत (एस.सी.)

12. 2009 एस सी 2205 पी वी के डिस्टिलरी लि0 बनाम महेन्द्र राम।

13. 2001 लेब आई सी 646 विक्रमादित्य पांडे बनाम इण्डस्ट्रियल ट्रिब्युनल।

14. ए आई आर 2010 एस सी 397 मै0 रितु मार्बल्स बनाम प्रभाकांत शुक्ला।

15. ए आई आर 2010 एस सी 402 स्टेट ऑफ यूपी. बनाम कमेटी ऑफ मैनेजमेंट।

16. 2010 ए आई आर एस सी डबल्यू 50 दिलीप सिंह बनाम स्टेट ऑफ यूपी

17. 2013 लेब आई सी 1048 बिलिमोरा नगरपालिका बनाम जासुवेन जसवंतभाई सोलंकी।

18. (2012) 1 एस सी सी 285 एच एस राजषेखर बनाम स्टेट बैंक ऑफ मैसूर।

19. ए आई आर 1976 एस सी 1111 स्टेट बैंक बनाम एन.एस. मनी।

20. (1982) 1 एस सी सी 645 रॉबर्ट डिसूजा बनाम एक्जीक्यूटिव इंजीनियर।

8. अप्रार्थी के विद्वान प्रतिनिधि का कथन है कि श्रमिकों की नियुक्ति केवल खुदाई के अस्थायी प्रकृति के काम के लिये हुयी थी। अस्थायी प्रकृति का कार्य पूर्ण होने पर श्रमिकों को हटा दिया गया। श्रमिक गोपाल के अलावा किसी भी व्यक्ति ने 240 दिवस से अधिक काम नहीं किया है। सभी श्रमिकों को एक माह का नोटिस दिया गया है। सभी श्रमिक पिछले 20 वर्षों से कहीं न कहीं

कार्यरत रहे हैं। श्रमिकगणों की नियमित नियुक्ति नहीं है। वर्ष 1988 के बाद केबल खुदाई का कार्य बंद हो चुका है। यह अब ठेकेदारों के मार्फत किया जाता है। अप्रार्थी विभाग द्वारा 7 वर्ष से अधिक कार्य करने वाले श्रमिकों की वरिष्ठता सूची बनायी गयी है। श्रमिकगण पर औद्योगिक विवाद अधिनियम 1947 के प्रावधान लागू नहीं होते हैं। अतः क्लेम खारिज किया जावे। अप्रार्थी के विद्वान अधिवक्ता द्वारा अपने तर्कों के समर्थन में निम्न न्यायिक दृष्टांत पेश किये गये हैं :—

01. सिविल अपील संख्या 3595—3612/99 सचिव, स्टेट ऑफ कर्नाटका व अन्य बनाम उमा देवी व अन्य का निर्णय दिनांक 10.04.2006

9. उभय पक्षों की बहस सुनी गयी तथा उभय पक्ष की ओर से प्रस्तुत न्यायिक दृष्टांतों का बारीकी से अद्योपांत विनम्रतापूर्वक अवलोकन किया गया।

10. पत्रावली के अवलोकन से प्रकट होता है कि प्रकरण में दिनांक 15.11.91 को नो डिस्पुट अवार्ड पारित किया गया है। दिनांक 25.03.92 को प्रकरण को पुनः रेस्टोर किया गया। दिनांक 11.01.94 के आदेश द्वारा अप्रार्थी द्वारा की गयी प्रारम्भिक आपत्तियाँ खारिज की गयी हैं। माननीय उच्च न्यायालय द्वारा डी.बी. स्पेशल अपील संख्या 82/95 में आदेश दिनांक 17.01.03 द्वारा प्रकरण में पुनः सुनवाई कर कानून के अनुसार निर्णय दिये जाने के आदेश दिये गये हैं। न्यायाधिकरण द्वारा आदेश दिनांक 11.12.03 को अप्रार्थी के विरुद्ध एकपक्षीय अवार्ड पारित किया गया। न्यायाधिकरण के आदेश दिनांक 16.05.07 द्वारा एकपक्षीय आदेश दिनांक 11.12.03 को निरस्त किया गया।

11. प्रार्थीगण सर्वश्री गोपाल, श्रवणसिंह, बाबू मोहम्मद, अनवर हुसैन, बख्तावर, नारासिंह, उस्मान अली एवं शकूर मोहम्मद ने अपने क्लेम के समर्थन में अपने शपथ पत्र प्रस्तुत किये हैं, जिसमें सभी श्रमिकगण ने अपने क्लेम के वर्णित तथ्यों को दोहराते हुये अभिकथन किया है कि श्रमिकगण जिस कार्य को सम्पादित कर रहे थे, वह स्थाई प्रकृति का है और जब तक विपक्षी संस्थान अस्तित्व में है, तब तक वह कार्य चलने वाला है। उनका यह भी शपथ पत्रों में अभिकथन है कि उन्हें कार्य करते लगभग 4 वर्ष हो गये थे, अतः उन्होंने अप्रार्थी से नियमित करने की मांग की, इसी कारण अप्रार्थी ने कार्य होते हुये भी अनुचित श्रम नीति अपनाते हुये व शोषण की नीति अपनाते हुये सेवा से पृथक कर दिया गया। श्रमिकगण को सेवापृथक करने से पूर्व अधिनियम की धारा 25 एफ, जी, एच के प्रावधानों की पालना नहीं की गयी और न ही नियम 77 एवं 78 की पालना की गयी। श्रमिकगणों को हटाकर नये श्रमिकों को संस्थान में कार्य पर लगाया है व श्रमिकगण को सेवापृथक करते समय उनसे कनिष्ठ व्यक्ति उस समय संस्थान में काम कर रहे थे। सभी श्रमिकगण ने प्रत्येक वर्ष में 240 दिवस से अधिक सेवायें पूर्ण की है, अतः समस्त लाभ व पिछले समस्त वेतन सहित सेवा में बहाल किया जावे। जिरह में सभी श्रमिकगणों ने अप्रार्थी विभाग

में केबल खुदाई का कार्य किया जाना बताया है तथा वर्ष 1984 से 1988 के बीच की अवधि में अप्रार्थी संस्थान में काम करना बताया है।

12. अप्रार्थी की ओर से प्रस्तुत गवाह श्री प्रमोद शंकर माथुर ने अपनी साक्ष्य के मुख्य परीक्षण में कथन किया है कि विभागीय रिकार्ड के अनुसार मुझे तथ्यों की जानकारी है। वाद प्रस्तुत करने से पूर्व विभाग को कोई नोटिस नहीं दिया गया। सभी श्रमिक केवल अस्थाई प्रकृति के कार्य के लिये मस्टरोल पर रखे थे। कार्य पूर्ण हो जाने पर विभाग के पास अन्य कोई कार्य नहीं होने पर विभाग को इनकी कोई आवश्यकता नहीं थी। सभी श्रमिकों को नोटिस देकर हटाया गया है। श्रमिक गोपाल के अतिरिक्त किसी श्रमिक ने एक वर्ष में 240 दिवस कार्य नहीं किया। जिरह में गवाह ने स्वीकार किया है कि श्रमिकों को 25 एफ की पालना में नोटिस दिये गये थे। श्रमिकों को अस्थायी रूप से केबिल कार्य के लिये मस्टरोल पर नियुक्त किया गया था। गवाह ने जिरह में आगे कहा है कि जिन श्रमिकों ने 7 वर्ष की सेवा पूरी कर ली तथा 240 दिवस से अधिक कार्य किया हो, उन्हें योग्य मानते हुये वरिष्ठता सूची बनायी थी। इन नौ श्रमिकों की योग्यता पूरी नहीं थी। केबिल खोदने का कार्य नियमित प्रकृति का नहीं है। अब यह काम ठेकेदारों के मार्फत कराया जाता है।

13. सभी श्रमिकगण द्वारा प्रस्तुत शपथ पत्रों में श्रमिकगण द्वारा अप्रार्थी संस्थान में 240 दिवस से अधिक कार्य करना बताया है। अप्रार्थी द्वारा श्रमिक गोपाल के अतिरिक्त अन्य किसी भी श्रमिक ने 240 दिवस काम नहीं करना बताया है। मेरे विनम्र मत में नियोजक का यह उत्तरदायित्व है कि वह यह इस तथ्य को साबित करे कि किस श्रमिक द्वारा कितनी अवधि तक काम किया गया। अप्रार्थी प्रतिनिधि द्वारा इस संबंध में मौखिक एवं दस्तावेजी साक्ष्य के रूप में ऐसी कोई साक्ष्य पेश नहीं की है कि संबंधित श्रमिक ने एक वर्ष में 240 दिवस काम नहीं किया हो। अप्रार्थी प्रतिनिधि द्वारा केवल श्रमिक गोपाल के द्वारा ही एक वर्ष में 240 दिवस काम किया जाना स्वीकार किया गया है, जबकि सभी नौ श्रमिकों को एक ही साइक्लोस्टाइल में दिनांक 30.04.88 को नोटिस जारी किया गया है। अप्रार्थी की ओर से प्रस्तुत गवाह श्री प्रमोदशंकर माथुर ने भी अपनी साक्ष्य में श्रमिकों को 25 एफ की पालना में ही नोटिस दिया जाना स्वीकार किया है। मेरे विनम्र मत में यदि सभी श्रमिकों द्वारा 240 दिवस कार्य पूर्ण नहीं किया गया था, तो सभी श्रमिकों को दिनांक 30.04.88 को 25 एफ की पालना में नोटिस क्यों जारी किया गया? इस संबंध में अप्रार्थी की ओर से कोई साक्ष्य पेश नहीं की है। अप्रार्थी विभाग द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 25 एफ की पालना में श्रमिकों को कोई छंटनी मुआवजा नहीं दिया गया और न ही इस संबंध में केन्द्र सरकार को कोई सूचना भेजी गयी। अतः अप्रार्थी विभाग द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 25 एफ की पालना अप्रार्थी विभाग द्वारा नहीं किया जाना प्रकट होता है।

14. माननीय सर्वोच्च न्यायालय द्वारा न्यायिक दृष्टांत 2010(III) डी.एन.जे. (एस.सी.) 1019 सीनियर सुप्रीटेंडेंट टेलीग्राफ (ट्रेफिक) बनाम संतोष कुमार तथा एस.बी. सी.डवल्यू. नंबर 281/2012 किषन व अन्य बनाम जज लेबर कोर्ट संख्या 02 में निर्णय दिनांक 08.01.2012 में माननीय उच्च न्यायालय द्वारा अभिनिर्धारित किया गया है कि इस तरह के दैनिक वेतन भोगी श्रमिकगण जिन्होंने 1-2 वर्ष ही कार्य किया हो तो उनको सेवा में वापिस लिये जाने का आदेश तथा बकाया वेतन भत्तों के दिलाये जाने के आदेश को उचित नहीं माना है, बल्कि ऐसे मामलों में श्रमिकगणों को एकमुष्ट क्षतिपूर्ति की राशि दिया जाना उचित माना है। माननीय सर्वोच्च न्यायालय तथा माननीय उच्च न्यायालय के नवीनतम निष्कर्षों को मद्देनजर रखते हुये इन श्रमिकगणों को पिछला वेतन एवं अन्य सभी लाभ दिया जाना तथा सेवा में पुनः नियोजित करना उचित नहीं समझता हूँ। उक्त दोनों न्यायिक दृष्टांतों के प्रकाश में प्रत्येक प्रार्थीगण/श्रमिकगण को पचास-पचास हजार रुपये क्षतिपूर्ति राशि के रूप में दिये जाने से न्याय के उद्देश्य की पूर्ति हो जायेगी। 2010(III) डी.एन.जे. (एस.सी.) 1019 सीनियर सुप्रीटेंडेंट टेलीग्राफ (ट्रेफिक) बनाम संतोष कुमार के पैरा संख्या 08 में इस बारे में महत्वपूर्ण दिशा-निर्देश प्रदान करता है। इसी तरह एस.बी. सी. डवल्यू. नंबर 281/2012 किषन व अन्य बनाम जज लेबर कोर्ट संख्या 02 में निर्णय दिनांक 08.01.2012 के अन्तिम दो पैराग्राफ में भी इस बारे में मार्गदर्शन प्रदान करते हैं। लिहाजा इन नवीनतम न्यायिक दृष्टांतों में प्रदान किये गये दिशा-निर्देशों के मुताबिक प्रत्येक श्रमिक को केवल पचास-पचास हजार रुपये क्षतिपूर्ति राशि अदा कर देने से न्याय के उद्देश्य की पूर्ति हो जायेगी।

15. प्रार्थी प्रतिनिधि की ओर से प्रस्तुत न्यायिक दृष्टांतों का मैंने बारीकी से अध्योपांत विनम्रतापूर्वक अवलोकन किया। प्रार्थी प्रतिनिधि द्वारा न्यायिक दृष्टांत प्रस्तुत कर श्रमिकगण को पुनः सेवा में लिये जाने तथा पिछले समस्त वेतन एवं अन्य सभी लाभ दिलाये जाने की प्रार्थना की है। इस संबंध में प्रार्थी प्रतिनिधि द्वारा प्रस्तुत दृष्टांतों के तथ्य एवं परिस्थितियों हस्तगत प्रकरण के तथ्यों एवं परिस्थितियों से भारी भिन्नता रखते हैं, अतः उक्त सभी न्यायिक दृष्टांत प्रार्थीगण/श्रमिकगण के केस में लागू नहीं होते हैं।

16. उपरोक्त विवेचन के फलस्वरूप प्रकरण में निम्न अवार्ड पारित किया जाता है :-

अवार्ड

श्रमिकगण सर्वश्री बुद्धा सिंह, गोपाल, श्रवणसिंह, बाबू मोहम्मद, अनवर हुसैन, बख्तावर, नारासिंह, उस्मान अली एवं शकूर मोहम्मद कुल 9 श्रमिकों की सेवामुक्ति नियोजक द्वारा औद्योगिक विवाद अधिनियम के प्रावधानों की पालना किये बिना करना उचित व वैध नहीं है। चूँकि श्रमिकगणों की सेवामुक्ति से पूर्व विपक्षी नियोजक द्वारा औद्योगिक विवाद अधिनियम 1947 के कुछ प्रावधानों की पालना नहीं की गयी है, अतः श्रमिकगण एकमुष्ट क्षतिपूर्ति राशि

प्राप्त करने के अधिकारी हैं। श्रमिक बुद्धा सिंह ने शपथ पत्र पेश कर अपने केस को प्रमाणित नहीं किया है। अतः श्रमिक बुद्धा सिंह के अतिरिक्त अन्य सभी श्रमिकगणों में से प्रत्येक श्रमिकगण को पचास-पचास हजार रुपये क्षतिपूर्ति राशि के रूप में दिलाये जाते हैं। माननीय उच्च न्यायालय के आदेश दिनांक 17.01.03 एवं न्यायाधिकरण के एकपक्षीय आदेश दिनांक 11.12.03 के बाद अप्रार्थी द्वारा दिनांक 14.06.04 को पुनः रेस्टोरेषन हेतु प्रार्थना पत्र पेश किया गया है। अतः श्रमिकगण को दिनांक 14.06.04 से पचास-पचास हजार रुपये एकमुष्ट क्षतिपूर्ति राशि के रूप में दिलाये जाते हैं। विपक्षी संस्थान प्रार्थी श्रमिक बुद्धा सिंह के अतिरिक्त अन्य सभी श्रमिकगण को दिनांक 14.06.04 से क्षतिपूर्ति राशि भुगतान करने की दिनांक तक 6 प्रतिषत की दर से ब्याज भी अदा करेगा। चूँकि श्रमिक अनवर हुसैन की मृत्यु हो चुकी है, अतः उसके वारिसान उक्त क्षतिपूर्ति राशि मय ब्याज प्राप्त करने के अधिकारी हैं।

17. संशोधित अवार्ड आज दिनांक 22.09.2014 को खुले न्यायालय में लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जावे।

हेमन्त कुमार जैन, न्यायाधीष

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2781.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जवाहर नवोदय विद्यालय, चुरू के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ सं. सीआईटी 51/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.10.2014 को प्राप्त हुआ था।

[सं. एल-42012/98/1995-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2781.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. CIT 51/1995) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Jawahar Navodaya Vidyalaya, Churu, and their workmen, which was received by the Central Government on 17.10.2014.

[No. L-42012/98/1995-IR (DU)]

P. K. VENUGOPAL, Section Officer

अनुबंध**केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर****केस नं० सी.आई.टी. 51/1995**

रैफरेंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक एल-42012/98/95- आई.आर.(डीयू) दिनांक 20.07.1995

गुरुदास उपाध्याय पुत्र श्री सत्यनारायण उपाध्याय,
मंत्री मार्ग, चूरु।

— प्रार्थी

बनाम

1. प्रिंसिपल, केन्द्रीय विद्यालय, चूरु।

2. कमिज़र, केन्द्रीय विद्यालय संगठन,

18 इन्स्टीट्यूशनल एरिया, शहीद

जीत सिंह मांग, न्यू देहली।

— अप्रार्थीगण

उपस्थित

पीटासीन अधिकारी: श्री हेमन्त कुमार जैन, आर.एच.जे.एस.

प्रार्थी की ओर से : श्री आर.सी. जैन

अप्रार्थी की ओर से : श्री हवा सिंह

दिनांक अवाई : 20.06.2014

अवाई

1. भारत सरकार के श्रम मंत्रालय की आज्ञा क्रमांक एल-42012/98/95- आई.आर.(डीयू) दिनांक 20.07.1995 एवं संशोधित विवाद दिनांक 10.10.95 से निम्न अनुसूची का विवाद “Whether the action of the management of Kendriya vidhyalaya, Churu, Rajasthan in terminating the service of Shri Guru Das Upadhyay S/o Shri Satyanarayan Upadhyay w.e.f. 04.05.91 and again 20-05-95 is legal and Justified? If not, to what relief the workmen is entitled to? अधिनिर्णय हेतु इस अधिकरण को प्राप्त हुआ है।

2. प्रार्थी श्रमिक की ओर से स्टेटमेंट ऑफ क्लेम पेश कर कथन किया कि प्रार्थी की नियुक्ति विपक्षी संख्या 1 के अधीन दिनांक 19.10.89 को हुयी थी। दिनांक 02.06.90 को प्रार्थी को सेवामुक्त कर दिया गया। दिनांक 18.06.90 को प्रार्थी को पुनः नियुक्ति दी गयी और 22.12.90 को सेवामुक्त कर दिया। फिर पुनः दिनांक 02.02.91 को नियुक्ति दी गयी और फिर 04.05.91 को सेवामुक्त कर दिया। प्रार्थी द्वारा दिनांक 19.10.89 से 04.05.91 तक 536 दिन कार्य किया गया। प्रार्थी की सेवामुक्ति के विरुद्ध माननीय उच्च न्यायालय में रिट याचिका पेश किये जाने पर माननीय उच्च न्यायालय द्वारा दिनांक 15.05.91 को एक अन्तरिम आदेश पारित कर सेवामुक्ति आदेश पर स्थगन आदेश जारी कर दिया। दिनांक 18.05.95 को माननीय उच्च न्यायालय द्वारा यह निर्णय दिया गया कि उक्त विवाद औद्योगिक

न्यायाधिकरण के समक्ष उठाना चाहिये। फिर प्रार्थी को पुनः दिनांक 20.05.95 को सेवामुक्त कर दिया गया। प्रार्थी द्वारा दिनांक 20.05.95 तक विपक्षी के यहाँ निरन्तर कार्य किया गया। प्रार्थी द्वारा पूरी मेहनत एवं ईमानदारी के साथ विपक्षी संस्थान में काम किया गया है। प्रार्थी को अकारण ही सेवामुक्त कर दिया गया। प्रार्थी द्वारा किया गया कार्य स्थाई प्रकृति का था। प्रार्थी को सेवामुक्त करते समय न ही कोई नोटिस दिया और न ही कोई नोटिस पे का भुगतान किया गया। प्रार्थी की सेवामुक्ति के समय उससे कनिष्ठ अनेक श्रमिक कार्यरत थे तथा प्रार्थी की सेवामुक्ति के बाद भी नये श्रमिकों को भर्ती किया गया है। विपक्षी द्वारा औद्योगिक विवाद अधिनियम की धारा 25 जी एवं 25 एफ की पालना नहीं की गयी तथा राज० औद्योगिक विवाद नियम 1958 के नियम 77 व 78 की पालना नहीं की गयी। प्रार्थी को सेवामुक्त किये जाने से पूर्व कोई आरोप पत्र नहीं दिया गया और न ही कोई जांच की गयी। प्रार्थी का सेवामुक्ति आदेश दिनांक 04.05.91 व फिर 20.05.95 अनुचित एवं अवैध है। जो निरस्त किये जाने योग्य है। प्रार्थी को पुनः सेवा में बहाल किया जाकर पुराने समस्त वेतन व अन्य लाभ दिलाये जावें।

3. अप्रार्थीगण द्वारा प्रारम्भिक आपत्ति करते हुये कथन किया कि प्रार्थी द्वारा प्रस्तुत क्लेम न्यायाधिकरण के समक्ष पोषणीय नहीं है। विपक्षी विद्यालय उद्योग की परिभाषा में नहीं आने से प्रार्थी द्वारा उठाया गया विवाद औद्योगिक विवाद की परिभाषा में नहीं आता है। गुणावगुण पर विपक्षी का कथन है कि विपक्षी विद्यालय की स्थापना दिनांक 17.10.89 को की गयी थी तथा तात्कालीन आवश्यकता को दृष्टिगत रखते हुये एवं आकस्मिक कार्य की उपलब्धता के कारण प्रार्थी को दिनांक 19.10.89 से अंशकालीन नियुक्ति कनिष्ठ लिपिक के पद पर पूर्णतया अंशकालीन एवं एक निश्चित राशि 713/-रु० मूल वेतन का 75 प्रतिशत पर तथा किसी प्रकार का भत्ता देय नहीं होगा, की शर्त पर दी थी। प्रार्थी को एक नियमित चयन प्रक्रिया के तहत नियुक्ति नहीं दी गयी। प्रार्थी की नियुक्ति पूर्णतया अस्थायी रूप से एक निश्चित अवधि के लिये ही की गयी थी, जो अवधि समाप्त होने पर उसकी सेवायें स्वतः ही समाप्त हो गयी। विपक्षी स्कूल में क०लि० का एक ही पद है, जिस पर श्री धमेन्द्र कुमार का स्थानान्तरण होने पर दिनांक 02.11.89 से कार्यभार संभाला गया है। प्रार्थी की नियुक्ति एक निश्चित अवधि एवं निश्चित राशि पर ही की गयी थी। प्रार्थी को सेवामुक्त किये जाने से पूर्व कोई आरोप पत्र एवं जांच की आवश्यकता नहीं थी। प्रार्थी के विरुद्ध कोई दुराचरण का आरोप नहीं था। अंशकालीन श्रमिक के लिये नोटिस एवं नोटिस पे की आवश्यकता नहीं होती है। अतः प्रार्थी की सेवामुक्ति उचित एवं वैध है। क्लेम खारिज किये जाने योग्य है।

4. प्रार्थी की ओर से स्वयं प्रार्थी साक्ष्य में परीक्षित हुआ है और विपक्षी की ओर से श्री डी.के. सैनी का शपथ पत्र पेश हुआ है, जिससे प्रार्थी प्रतिनिधि द्वारा जिरह की गयी है।

5. उभय पक्षों की बहस सुनी गयी। पत्रावली का अवलोकन किया गया।

6. प्रार्थी के विद्वान प्रतिनिधि का तर्क है कि प्रार्थी की नियुक्ति 19.10.89 को क्लर्क कम टाइपिस्ट के पद पर हुयी थी। दिनांक 02.06.90 को प्रार्थी को सेवामुक्त कर दिया गया। दिनांक 18.06.90 को प्रार्थी को पुनः नियुक्ति दी गयी और 22.12.90 को सेवामुक्त कर दिया। फिर पुनः दिनांक 02.02.91 को नियुक्ति दी गयी और फिर 04.05.91 को सेवामुक्त कर दिया। उक्त सेवामुक्ति के विरुद्ध माननीय उच्च न्यायालय में रिट याचिका पेश किये जाने पर माननीय उच्च न्यायालय द्वारा दिनांक 15.05.91 को एक अन्तरिम आदेश पारित कर सेवामुक्ति आदेश पर स्थगन आदेश दिया गया। दिनांक 18.05.95 को माननीय उच्च न्यायालय द्वारा यह निर्णय दिया गया कि उक्त विवाद औद्योगिक न्यायाधिकरण के समक्ष उठाना चाहिये। फिर प्रार्थी को पुनः दिनांक 20.05.95 को सेवामुक्त कर दिया गया। श्रम एवं नियोजन मंत्रालय के आदेश दिनांक 10.10.95 द्वारा रेफरेंस में संशोधन हुआ है। प्रार्थी द्वारा दिनांक 15.05.91 से 20.05.95 तक विपक्षी के यहाँ लगातार काम किया गया है। प्रार्थी को दोनों बार सेवामुक्त करते समय नोटिस, एक माह का नोटिस पे, छंटनी मुआवजा नहीं दिया गया। प्रार्थी द्वारा कुल साढ़ें पांच साल विपक्षी के यहाँ काम किया गया है। विपक्षी द्वारा धारा 25 एफ की उल्लंघना की है। प्रार्थी श्रमिक यदि पार्ट टाइम पर था, तो यह विपक्षी को सिद्ध करना था। स्कूल उद्योग की परिभाषा में आता है। विपक्षी के गवाह ने जिरह में स्वीकार किया है कि प्रार्थी को सेवामुक्त करते समय नोटिस, एक माह का नोटिस पे, छंटनी मुआवजा नहीं दिया गया। उपस्थिति पंजिका में समय 7.20 से 1.20 तथा 9 से 3 बजे तक दिखाया है प्रार्थी की पार्ट टाइम/अस्थायी नियुक्ति प्रक्रिया के अनुरूप थी। विपक्षी द्वारा लिखित बहस के साथ जो दस्तावेज पेश किये हैं, वे पढ़े नहीं जा सकते, क्योंकि वे प्रदर्शित नहीं हैं। प्रार्थी को फिक्सड टर्म पर नियुक्ति नहीं दी गयी। प्रार्थी श्रमिक द्वारा 240 दिवस से अधिक कार्य किया गया है। अतः प्रार्थी का सेवामुक्ति आदेश निरस्त किये जाने योग्य है। प्रार्थी प्रतिनिधि द्वारा अपने तर्कों के समर्थन में निम्न न्यायिक दृष्टांत पेश किये गये हैं :-

1. सिविल अपील संख्या 4883-4884/2014 भुवनेश कुमार द्विवेदी बनाम मै0 हिन्डालको इण्डस्ट्रीज लि0 निर्णय दिनांक 25.04.14 (माननीय सर्वोच्च न्यायालय)
2. 2010 II एल एल जे 277 (एस.सी.) हरजिन्द्र सिंह बनाम पंजाब स्टेट वेयरहाउसिंग कारपोरेशन।
3. 2008(119) एफ एल आर 398 न्यू इण्डिया एण्टोरेस कंपनी लि. बनाम ए. शंकरालिंगम।
4. 2012(132) एफ एल आर 571 कान सिंह बनाम डिस्ट्रिक्ट आयुर्वेद आफिसर व अन्य।
5. 2012 डब्ल्यू एल सी (यू सी) 663 आराम सैनी बनाम सीजीआईटी।

6. 2012 (134) एफ एल आर 832 श्रीमती दमयंती बनाम इन्डस्ट्रियल ट्रिब्युनल कम लेबर कोर्ट, पानीपत।
7. 2010 लेब आई सी 1039 रमेश कुमार बनाम स्टेट ऑफ हरियाणा।
8. 2010(125) एफ एल आर 187 (एस.सी.) कृष्ण सिंह बनाम एच.एस.ए.एम. बोर्ड रोहतक।
9. 2010 (125) एफ एल आर 629 अनूप शर्मा बनाम पब्लिक हेल्थ डिवीजन नंबर 1 पानीपत (एस.सी.)
10. 2003(3) आर एल डब्ल्यू 1966 स्टेट ऑफ राजस्थान व अन्य बनाम श्री महेन्द्र जोषी व अन्य।
11. 2011(2) डब्ल्यू एल सी 466 सुरेश चन्द्र बनाम नगर पालिका राजसमंद।
12. 2008(118) एफ एल आर 950 (एस.सी.) राज0 ललितकला एकेडमी बनाम राधेष्णाम।
13. 1988 (57) एफ एल आर 462 ए.सुंदराम्बल बनाम गवर्नमेंट ऑफ गोवा, दामन एण्ड डियू वगैरह।
14. 2006(109) एफ एल आर 1191 मैन्यूलमोनी मैट्रिकुलेशन स्कूल चैन्नई बनाम लेबर कोर्ट, चैन्नई।
15. 2008(2) डब्ल्यू एल सी 727 विकास अधिकारी पंचायत समिति सादुलपुर बनाम लेबर कोर्ट बीकानेर व अन्य।

7. विपक्षी के विद्वान प्रतिनिधि का तर्क है कि चरू में नया कार्यालय खोले जाने पर "तात्कालिक आवश्यकता की पूर्ति" के लिये प्रार्थी को 'पार्ट टाइम नियुक्ति' एक फिक्सड राशि 713/रु0 पर दी गयी थी। प्रार्थी को पूर्णतया अस्थायी रूप से एवं एक निश्चित अवधि के लिये पार्ट टाइम के रूप में रखा गया था। इसके बाद किसी भी श्रमिक को कोई नियुक्ति नहीं दी गयी, केवल धमेन्द्र नसीराबाद से स्थानांतरण होकर आया है। प्रार्थी को सेवामुक्त करने के बाद माननीय उच्च न्यायालय से स्टे होने पर ही पुनः सेवा पर रखा गया था। माननीय उच्च न्यायालय में स्टे खारिज होने पर प्रार्थी को पुनः सेवा से दिनांक 20.05.95 को हटा दिया गया था। जिरह में श्रमिक ने स्वीकार किया है उसने अपना नियुक्ति पत्र पेश नहीं किया है, उसे फिक्सड राशि 713/-रु. मिलती थी। दिनांक 19.10.89 से 04.05.91 तक कभी भी नियमित वेतन की मांग नहीं की। विपक्षी स्कूल उद्योग की परिभाषा में नहीं आता है। अतः प्रार्थी द्वारा प्रस्तुत क्लेम खारिज किये जाने योग्य है। अप्रार्थी प्रतिनिधि द्वारा अपने तर्कों के समर्थन में निम्न न्यायिक दृष्टांत पेश किये गये हैं :-

1. माननीय सर्वोच्च न्यायालय का फिजिकल रिसर्च लेबोरेटरी बनाम के.जी. शर्मा में निर्णय दिनांक 08.04.97
2. (2002) 5 एस सी सी 654 हरियाणा स्टेट एस सी सी डब्ल्यू स्टोर लि0 बनाम रामनिवास व अन्य।

3. (2006) 1 एस सी सी 253 किषोर चन्द्र समल बनाम उडीसा स्टेट केषव डवलपमेंट का0लि0।

4. (2006) 2 एस सी सी 716 एम.पी. स्टेट एग्री इण्डस्ट्रीज डवलपमेंट का0लि0 व अन्य बनाम एस.सी. पांडे।

5. (2006) 3 एस सी सी 81 मुनिषिपल काउंसिल, समराला बनाम राज कुमार।

6. (2006) 8 एस सी सी 508 स्टेट ऑफ राज0 बनाम सरजीत सिंह व अन्य।

8. उभय पक्षों के तर्कों का मनन किया एवं पत्रावली का गहनता से अवलोकन व अध्ययन किया गया।

9. मेरे विनम्र मत में निष्कर्ष पर पहुंचने से पूर्व दोनों पक्षों की ओर से प्रस्तुत गवाहों के बयानों की विवेचना करना उचित होगा।

10. प्रार्थी गुरुदास उपाध्याय द्वारा प्रस्तुत शपथ पत्र के मुख्य परीक्षण में स्टेटमेंट ऑफ क्लेम में दिये गये तथ्यों को दोहराया गया है। जिरह में प्रार्थी द्वारा यह स्वीकार किया गया है कि वह पार्ट टाइम वर्कर था। नियुक्ति आदेश न्यायालय में पेश नहीं किये हैं तथा उसे फिक्सड राशि 713/-रु0 मिलते थे तथा उसने नियमित वेतन की मांग नहीं की।

11. विपक्षी की ओर से श्री डी.के. सैनी द्वारा अपने शपथ पत्र के मुख्य परीक्षण में क्लेम में दिये गये जवाब को दोहराया गया है। जिरह में भी गवाह ने प्रार्थी की नियुक्ति पार्ट टाइम एवं अस्थायी रूप से होना तथा प्रार्थी को दिनांक 04.05.91 को सेवामुक्त किया जाना, माननीय उच्च न्यायालय के आदेश की पालना में दिनांक 15.05.91 से 20.05.91 तक काम करना तथा पुनः 20.05.91 को सेवा से हटाया जाना बताया है। साथ ही आगे कथन किया है कि प्रार्थी को सेवामुक्ति के समय नोटिस, नोटिस पे, छंटनी मुआवजा नहीं दिया गया।

12. अप्रार्थी प्रतिनिधि द्वारा यह प्रारम्भिक आपत्ति की गयी है कि विपक्षी स्कूल उद्योग की परिभाषा में नहीं आता है। मेरे विनम्र मत में विद्यालय में जिसमें छात्र-छात्राओं का अध्ययन हेतु प्रवेश होता है, उनसे अध्ययन हेतु फीस वसूल की जाती है और विद्यालय द्वारा लाभ-हानि के खाते संधारित किये जाते हैं। प्रार्थी प्रतिनिधि द्वारा प्रस्तुत न्यायिक दृष्टांत 1988 (57) एफ एल आर 462 ए.सुंदराम्बल बनाम गवर्नमेंट ऑफ गोवा, दामन एण्ड डियू वगैरह एवं 2006(109) एफ एल आर 1191 मैन्यूलमोनी मैट्रिकुलेशन स्कूल चैन्न्ई बनाम लेबर कोर्ट, चैन्न्ई में यह सिद्धांत प्रतिपादित किये गये हैं कि शैक्षिक संस्थान उद्योग की परिभाषा में आते हैं। एक विद्यालय में नॉन टीचिंग स्टाफ द्वारा औद्योगिक विवाद अधिनियम के तहत विवाद उठाया जा सकता है। उपरोक्त न्यायिक दृष्टांतों के प्रकाश में अप्रार्थी प्रतिनिधि द्वारा की गयी यह प्रारम्भिक आपत्ति स्वीकार किये जाने योग्य है। विपक्षी संस्थान उद्योग की परिभाषा में आता है।

13. प्रार्थी प्रतिनिधि द्वारा यह तर्क दिया गया है कि प्रार्थी श्रमिक द्वारा 240 दिवस से अधिक कार्य किया गया है। प्रार्थी श्रमिक द्वारा दिनांक 19.10.89 को विपक्षी संख्या 1 के यहाँ नियुक्ति हुयी है, दिनांक 02.06.90 को प्रार्थी को सेवामुक्त कर दिया गया। फिर पुनः दिनांक 18.06.90 को प्रार्थी को नियुक्ति दी गयी। फिर दिनांक 22.12.90 को सेवामुक्त कर दिया गया। इसके बाद पुनः दिनांक 02.02.91 को प्रार्थी को नियुक्ति दी गयी। फिर पुनः प्रार्थी को दिनांक 04.05.91 को सेवामुक्त कर दिया गया। इस प्रकार इस अवधि में जो प्रार्थी श्रमिक द्वारा कार्य किया गया है, वह लगातार 240 दिवस विपक्षी संस्थान में काम नहीं किया जाकर टुकड़ों में किया गया है। औद्योगिक विवाद अधिनियम के अनुसार किसी भी संस्थान में लगातार 240 दिवस कार्य करना आवश्यक है। प्रार्थी श्रमिक द्वारा इस अवधि में लगातार 240 दिवस कार्य नहीं किया गया है।

14. प्रार्थी द्वारा दिनांक 15.05.91 से 20.05.95 तक की अवधि में जो कार्य विपक्षी संस्थान के यहाँ किया गया है, वह तो माननीय राजस्थान उच्च न्यायालय द्वारा दिये गये स्टे के कारण किया गया है। अतः मेरे विनम्र मत में जिस अवधि में कार्य किसी न्यायिक आदेश के तहत किया गया हो, वह गणनीय नहीं माना जा सकता। ऐसी स्थिति में प्रार्थी श्रमिक द्वारा जो दिनांक 15.05.91 से 20.05.95 तक विपक्षी संस्थान में कार्य किया गया है, वह माननीय उच्च न्यायालय के आदेश की पालना में किया गया है। इस अवधि में किये गये कार्य को 240 दिवस के साथ नहीं जोड़ा जा सकता। अतः यह अवधि गणनीय नहीं है।

15. अप्रार्थी प्रतिनिधि का यह तर्क रहा है कि प्रार्थी श्रमिक को जो नियुक्ति दी गयी है वह, “पूर्णतया अस्थायी” “पार्ट-टाइम” एवं एक फिक्सड राशि पर दी गयी थी। प्रार्थी श्रमिक द्वारा जिरह में स्वयं स्वीकार किया है कि उसे पार्ट टाइम पर ही नियुक्ति दी गयी थी, उसने अपनी नियुक्ति के आदेश न्यायालय में पेश नहीं किये हैं तथा अपने सेवाकाल में उसने कभी नियमित वेतन की मांग नहीं की थी। अतः स्वयं प्रार्थी द्वारा यह स्वीकार किया गया है कि उसकी नियुक्ति पार्ट टाइम हुयी थी। उसे प्रतिमाह 713/-रु0 फिक्सड वेतन दिया गया। प्रार्थी श्रमिक द्वारा अपनी नियुक्ति के संबंध में कोई भी आदेश पेश नहीं किया गया है, जिसमें उसकी नियुक्ति संबंधी शर्तों का उल्लेख हो। मेरे विनम्र मत में किसी भी श्रमिक को न्याय हेतु न्यायालय के समक्ष स्वच्छ हाथों से आना चाहिये। किसी भी तथ्य को छुपाने एवं प्रस्तुत नहीं करने के आधार पर श्रमिक कोई राहत पाने का अधिकारी नहीं हो सकता। हस्तगत प्रकरण में भी प्रार्थी द्वारा अपनी नियुक्ति के संबंध में कोई आदेश पेश नहीं किया गया है, जिसमें उसकी नियुक्ति संबंधी शर्तों का उल्लेख हो।

16. प्रार्थी प्रतिनिधि द्वारा यह आपत्ति की गयी है कि विपक्षी संस्थान द्वारा औद्योगिक विवाद अधिनियम की धारा 25 एफ 25 जी की पालना नहीं की गयी। प्रार्थी द्वारा स्वयं यह स्वीकार किया गया है कि वह एक पार्ट टाइम वर्कर था। मेरे विनम्र मत में औद्योगिक विवाद अधिनियम की धारा 25एफ एवं 25जी एक

नियमित कर्मचारी पर ही लागू होते हैं, न कि पार्ट टाइम वर्कर पर। प्रार्थी एक पार्ट टाइम वर्कर था। अतः विपक्षी संस्थान द्वारा प्रार्थी को सेवामुक्त करते समय धारा 25एफ, 25जी की पालना किया जाना उपरोक्त वर्णित परिस्थितियों में आवश्यक नहीं था। अतः प्रार्थी प्रतिनिधि का यह तर्क स्वीकार किये जाने योग्य नहीं है। विपक्षी प्रतिनिधि द्वारा प्रस्तुत न्यायिक दृष्टांत 2 लगायत 6 में दिये गये दिषा-निर्देशों का प्रभाव ऊपर विवेचना में दिया गया है।

17. प्रार्थी प्रतिनिधि की ओर से प्रस्तुत न्यायिक दृष्टांत संख्या 1 लगायत 13 के तथ्य एवं परिस्थितियों हस्तगत प्रकरण से भिन्नता रखते हैं। अतः प्रार्थी प्रतिनिधि की ओर से प्रस्तुत न्यायिक दृष्टांत प्रार्थी श्रमिक के केस में लागू नहीं होते हैं।

18. उपरोक्त विवेचन के फलस्वरूप प्रकरण में निम्न अवार्ड पारित किया जाता है:-

अवार्ड

"The action of the management of Kendriya vidhyalaya, Churu, Rajasthan in terminating the service of Shri Guru Das Upadhyay S/o Shri Satyanarayan Upadhyay w.e.f. 04.05.91 and again 20-05-95 is legal and Justified. The workmen is not entitled to any relief."

19. अवार्ड आज दिनांक 20.06.2014 को खुले न्यायालय में लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाषनार्थ नियमानुसार भेजा जावे।

हेमन्त कुमार जैन, न्यायाधीष

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2782.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जवाहर नवोदय विद्यालय, कुचामन सिटी (नागौर) के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ सं. सीआईटी 28/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.10.2014 को प्राप्त हुआ था।

[सं. एल-42012/75/1995-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2782.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CIT 28/1996) of the Cent. Govt. Indus. Tribunal, Jaipur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Jawahar Navodaya Vidyalaya, Kuchaman City (Nagaur),

and their workman, which was received by the Central Government on 17.10.2014.

[No. L-42012/75/1995-IR (DU)]

P. K. VENUGOPAL, Section Officer

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं० सी.आई.टी. 28/1996

रैफरेंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक एल-42012/75/95- आई.आर.(डी.यू.) दिनांक 27.06.1996

दशरथ सिंह पुत्र श्री हनुमान सिंह,
ग्राम पनवारी, भैरु तालाव पो० कुचामन सिटी,
जिला- नागौर।

— प्रार्थी

बनाम

प्रधानाचार्य, जवाहर नवोदय, विद्यालय,
मु०पो० कुचामन सिटी,
जिला- नागौर।

— अप्रार्थी

उपस्थित

पीटासीन अधिकारी: श्री हेमन्त कुमार जैन, आर.एच.जे.एस.

प्रार्थी की ओर से : श्री बी.एम. बागड़ा

अप्रार्थी की ओर से : श्री हवा सिंह

दिनांक अवार्ड : 10.02.2014

अवार्ड

1. भारत सरकार के श्रम मंत्रालय की आज्ञा क्रमांक 42012/75/95 दिनांक 27.06.1996 से निम्न अनुसूची का विवाद "Whether the action of the principal Jawahar Navodaya Vidyalaya, Kuchaman City (Nagaur) is Justified in terminating the services of Shri Dashrath Singh? If not, to what relief the workmen concerned is entitled to?" अधिनिर्णय हेतु इस अधिकरण को प्राप्त हुआ है।

2. प्रार्थी श्रमिक की ओर से स्टेटमेंट ऑफ क्लेम पेश कर कथन किया कि प्रार्थी को वाहन चालक के रिक्त पद पर दिनांक 18.12.93 के आदेश द्वारा दिनांक 20.08.93 को लगाया गया था। प्रार्थी को दिनांक 07.08.94 को बिना कोई कारण बताये सेवा से हटा दिया गया। प्रार्थी द्वारा पुनः काम पर लिये जाने बाबत प्रस्तुत प्रार्थना पत्रों पर कोई ध्यान नहीं देने पर विवाद श्रम आयुक्त के प्रस्तुत किया गया। विपक्षी द्वारा धारा 25 एफ, 25 जी एवं 25 एच की पालना नहीं की गयी। प्रार्थी द्वारा दिनांक 20.08.93 से दिनांक 06.08.94 तक लगातार काम किया है। प्रार्थी द्वारा 240 दिवस से अधिक काम किया गया है। प्रार्थी को सेवा से हटाते समय कोई वरीयता सूची तैयार नहीं की गयी। प्रार्थी को

हटाने के बाद किषोर सिंह को रखा गया और उसके बाद प्रार्थी को नाम बदलकर भागीरथ सिंह के नाम से 3-4 महीने काम पर रखा गया और उसके बाद रामकरण को काम पर रखा गया जो आज भी वहाँ काम कर रहा है। प्रार्थी को परेषान करने की नीयत से सेवा से हटाया गया है। प्रार्थी को सेवा से अलग करने की कार्यवाही को निरस्त घोषित कर पुनः सेवा में लेकर सभी लाभ-परिलाभ दिलाये जावें।

3. अप्रार्थीगण की ओर से स्टेटमेंट ऑफ क्लेम का जवाब प्रस्तुत कर कथन किया कि प्रार्थी को दिनांक 20.08.93 को अंशकालीन मोटर चालक के पद पर रखा गया था। प्रार्थी की सेवायें दिनांक 16.11.93, 12.02.94 एवं उसके बाद दिनांक 13.12.93 तक के लिये बढ़ायी गयी थी। प्रार्थी की सेवायें दिनांक 13.02.94 को नहीं बढ़ाने के कारण स्वतः ही समाप्त हो गयी। प्रार्थी की सेवासमाप्ति औ0वि0अधि0 1947 की धारा 2(ण ण)(ख ख) के प्रावधानों के अनुसार छंटनी की परिभाषा में नहीं आती है। प्रार्थी द्वारा स्वयं ही स्वेच्छा से कार्य पर नहीं आने पर पंजीकृत ए.डी. डाक द्वारा ड्यूटी पर उपस्थित होने पर पत्र दिनांक 27.5.95, 3.7.95, 31.7.95 जारी किये गये। जिसमें यह अंकित किया गया कि प्रार्थी के ड्यूटी पर उपस्थित नहीं दी तो तो यह धारणा हो जावेगी कि वह कार्य करने का इच्छुक नहीं है। अप्रार्थी संस्थान "उद्योग" की परिभाषा में नहीं आता है, जिस पर औद्योगिक विवाद अधिनियम के प्रावधान लागू नहीं हाते हैं। प्रार्थी स्वयं की इच्छा से कार्य छोड़कर चला गया था। वाहन चालक का पद (एक्स सर्विस मैन्) पूर्व सैनिक के लिये आरक्षित था और जिस पर नियमानुसार जिला सैनिक बोर्ड द्वारा अनुषंषा किये जाने पर रामकरण को नियुक्ति दे दी गयी। प्रार्थी को कभी भी नियमित पद के विरुद्ध नियोजित नहीं किया गया। प्रार्थी स्वयं की इच्छा से कार्य छोड़कर गया है। प्रार्थी कोई राहत पाने का अधिकारी नहीं है।

4. प्रार्थी द्वारा जवाबुल जवाब पेश कर कथन किया कि विपक्षी संस्थान पर औद्योगिक विवाद अधिनियम के प्रावधान लागू होते हैं। प्रार्थी द्वारा 240 दिवस से अधिक कार्य किया गया है। विपक्षी द्वारा भेजे गये पत्रों का प्रार्थी ने लिखित जवाब दिया है। प्रार्थी को वाहन चालक के पद पर वापिस पूरे वेतन सहित बहाल किया जावे।

5. साक्ष्य में प्रार्थी की ओर से स्वयं दशरथ सिंह का शपथ पत्र पेश हुआ है, जिससे विपक्षी प्रतिनिधि द्वारा जिरह की गयी है। विपक्षी की ओर से श्री एल0पी0 शर्मा का शपथ पत्र पेश हुआ है, जिससे प्रार्थी प्रतिनिधि ने जिरह की है।

6. उभय पक्षों की बहस सुनी गयी। पत्रावली का अवलोकन किया गया।

7. प्रार्थी के विद्वान प्रतिनिधि का तर्क है कि प्रार्थी को प्रदर्ष डब्ल्यू-1 द्वारा 22/-रु0 दैनिक वेतन पर चालक के पद पर दिनांक 20.08.93 को नियुक्ति दी गयी थी, जिस पर प्रार्थी द्वारा

दिनांक 06.08.94 तक लगातार काम किया गया गया। दिनांक 07.08.94 को प्रार्थी को बिना कारण बताये सेवा से हटा दिया गया। प्रार्थी की सेवा अवधि प्रदर्ष डब्ल्यू-2 द्वारा बढ़ायी गयी है। प्रार्थी द्वारा विपक्षी संस्थान में 351 दिवस काम किया गया है। विपक्षी गवाह ने भी अपनी जिरह में प्रार्थी का दिनांक 20.08.93 से 06.08.94 तक लगातार काम करना स्वीकार किया है। विपक्षी द्वारा 25 एफ की पालना नहीं की गयी। प्रार्थी को एक माह का नोटिस वेतन नहीं दिया गया। प्रार्थी प्रतिनिधि का तर्क है कि प्रार्थी के नियुक्ति आदेश में यह कहीं नहीं लिखा है कि उसे संविदा आधार पर रखा गया हो। विपक्षी द्वारा भेजे गये पत्रों का प्रार्थी ने लिखित में जवाब दिया है। विपक्षी द्वारा 25 एफ की पालना नहीं की गयी। अतः सेवामुक्ति को अवैध घोषित कर पुनः सेवा में सभी लाभों सहित लिया जावे। प्रार्थी प्रतिनिधि द्वारा अपने तर्कों के समर्थन में निम्न न्यायिक दृष्टांत पेश किये गये हैं —

1. 2000 लेब आई सी 3304 एग्रीकल्चर प्रोड्यूस मार्केट कमेटी बनाम अपोक हरिकुनी।
2. 1999 लेब आई सी 97 प्रिंसिपल डूंगर कॉलेज बीकानेर बनाम ओमप्रकाष व अन्य।

8. विपक्षी के विद्वान प्रतिनिधि का तर्क है कि प्रार्थी को प्रदर्ष पी-1 द्वारा दिनांक 20.08.93 को संविदा आधार पर रखा गया था। प्रदर्ष पी-2 द्वारा प्रार्थी की सेवायें दिनांक 20.11.93 तक बढ़ायी गयी थी। प्रदर्ष पी-3 द्वारा प्रार्थी को दिनांक 13.02.94 से सेवा से पृथक कर दिया गया। विपक्षी प्रतिनिधि का तर्क है कि प्रार्थी द्वारा दिनांक 20.08.93 से 07.08.94 तक 240 दिवस से अधिक काम करना बताया है, जबकि प्रार्थी को दिनांक 13.02.94 से सेवा से हटा दिया गया है। प्रार्थी द्वारा मात्र 175 दिवस ही कार्य किया गया है। प्रार्थी को ड्यूटी पर उपस्थित होने बाबत प्रदर्ष पी-4 लगायत 7 दिनांक 15.05.95, 27.05.95, 03.07.95, 31.07.95 को रजिस्टर्ड ए.डी. पत्र जारी किये गये हैं, जो वापिस प्राप्त हुये हैं। जब ये पत्र प्रार्थी को प्राप्त ही नहीं हुये तो इनकी पालना में उपस्थित कैसे हो सकता है। प्रार्थी द्वारा एक वित्तीय वर्ष में 240 दिवस से अधिक कार्य नहीं किया गया है। औ0वि0अधिनियम की धारा 2 (ओ ओ)(बी बी) के अनुसार 240 दिवस से अधिक कार्य सिद्ध करने का भार प्रार्थी स्वयं पर है। प्रार्थी स्वयं की इच्छा से कार्य छोड़कर चला गया था। विपक्षी पर धारा 25 एफ के प्रावधान लागू नहीं होते हैं। अतः क्लेम खारिज किया जावे। विपक्षी प्रतिनिधि द्वारा अपने तर्कों के समर्थन में निम्न न्यायिक दृष्टांत पेश किये गये हैं —

1. (2005) 5 एस सी सी 100 रिजर्व बैंक ऑफ इण्डिया बनाम एस. मणि व अन्य
2. डबल्यू पी (सी) 3768/2003 प्रिंसिपल केन्द्रीय विद्यालय सन बनाम जहांगीर खां
3. (2005) 11 एस सी सी 229 चीफ इंजीनियर बनाम केषव राव

4. (2005) एस सी सी 481 बटला कॉ0 शुगर मिल्स बनाम स्वरूप सिंह
5. (2002) 5 एस सी सी 654 हरियाणा स्टेट एफ सी सी डब्ल्यू स्टोर लि. बनाम रामनिवास।
6. (1997) 4 एस सी सी 391 हिमांशु कुमार विद्यार्थी व अन्य बनाम स्टेट ऑफ बिहार।
7. (1997) 4 एस सी सी 393 स्टेट ऑफ महाराष्ट्र बनाम प्रियाधर महाराज
9. उभय पक्षों के तर्कों का मनन किया एवं पत्रावली का गहनता से अवलोकन व अध्ययन किया गया।
10. पत्रावली के अवलोकन से प्रकट होता है कि प्रार्थी की नियुक्ति विपक्षी द्वारा आदेश दिनांक 20.08.93 द्वारा 22/-रू0 प्रतिदिन की दर से दैनिक वेतन पर की गयी थी। प्रदर्ष पी-2 आदेश दिनांक 04.11.93 द्वारा प्रार्थी की सेवाअवधि को नियुक्ति आदेश में वर्णित शर्तों के अधीन दिनांक 16.11.93 तक बढ़ायी गयी थी। प्रदर्ष डब्ल्यू-2 द्वारा प्रार्थी की सेवाअवधि को 179 दिवस की अवधि अथवा नई भर्ती, जो भी पहले हो, तक के लिये बढ़ायी गयी थी। प्रदर्ष पी-3 आदेश दिनांक 12.02.94 द्वारा प्रार्थी को दिनांक 13.02.93 से सेवा से पृथक कर दिया गया।
11. नियुक्ति आदेश दिनांक 20.08.93 के अवलोकन से स्पष्ट है कि प्रार्थी की नियुक्ति दिनांक 20.08.93 से 19.09.93 तक एक माह के लिये दैनिक वेतन पर की गयी थी। नियुक्ति आदेश में प्रार्थी नियमित नियुक्ति के लिये योग्य नहीं होने एवं उसकी सेवायें बिना किसी कारण के एवं बिना कोई नोटिस दिये किसी भी समय समाप्त की जाने की शर्त भी उल्लेखित थी। प्रार्थी की सेवाअवधि को विपक्षी द्वारा आदेश दिनांक 04.11.93 एवं 18.12.93 द्वारा बढ़ाया गया था। परन्तु उक्त आदेश भी नियुक्ति आदेश में उल्लेखित शर्तों के अधीन थे। प्रार्थी को आदेश दिनांक 12.02.94 को दिनांक 13.02.94 से सेवा से पृथक कर दिया गया। प्रार्थी प्रतिनिधि द्वारा प्रार्थी का दिनांक 20.08.93 से 06.08.94 तक वाहन चालक के पद पर कार्यरत होना बताया है, जबकि सेवामुक्ति आदेश से स्पष्ट है कि प्रार्थी की सेवायें दिनांक 12.02.94 के आदेश से समाप्त की जा चुकी है। अतः प्रार्थी प्रतिनिधि का यह तर्क विष्वसनीय प्रतीत नहीं होता है कि प्रार्थी द्वारा दिनांक 06.08.94 तक कार्य किया गया हो।
12. साक्ष्य प्रार्थी में श्री दशरथ सिंह ने अपने मुख्य परीक्षण में कथन किया है कि प्रार्थी द्वारा दिनांक 20.08.93 से 06.08.94 तक वाहन चालक के पद पर निरन्तर कार्य किया गया। प्रदर्ष डब्ल्यू-2 द्वारा प्रार्थी की सेवाअवधि को 179 दिवस के लिये बढ़ाया गया। प्रार्थी को दिनांक 07.08.94 से बिना कारण बताये सेवा पर लेने से मना कर दिया गया। विपक्षी द्वारा 25 एफ के अनुसार एक माह का नोटिस वेतन और छंटनी मुआवजा नहीं दिया गया। प्रार्थी के बाद रामकरण को वाहन चालक के पद पर रखा गया, जो

वर्तमान में भी कार्यरत है। प्रतिपरीक्षा में गवाह ने स्वीकार किया है कि उसकी नियुक्ति एक माह के लिये दैनिक वेतन पर की गयी थी, फिर बाद में सेवा बढ़ा दी थी। प्रार्थी ने अपनी प्रतिपरीक्षा में यह स्वीकार किया है कि उसका चयन नियमों के तहत किया था या नहीं, मुझे मालूम नहीं है। गवाह ने प्रदर्ष डी-4 पत्र प्राप्त होने पर एल.पी. शर्मा ने ड्यूटी पर नहीं लेना बताया है। गवाह द्वारा दिनांक 06.08.94 तक लगातार काम किया गया हो, इस संबंध में कोई भी दस्तावेजी एवं मौखिक साक्ष्य न्यायाधिकरण के समक्ष पेश नहीं की है। जिससे यह नहीं माना जा सकता कि प्रार्थी द्वारा दिनांक 06.08.94 तक लगातार काम किया गया हो।

13. विपक्षी की ओर से साक्ष्य में एल0पी0 शर्मा परीक्षित हुये हैं। जिन्होंने अपने मुख्य परीक्षण में प्रार्थी की नियुक्ति दैनिक वेतन पर एक माह के लिये किया जाना तथा बाद में उसकी सेवायें बढ़ायी जाना बताया है। प्रार्थी द्वारा दिनांक 15.05.95, 27.05.95, 03.07.95, 26/31.05.95 द्वारा प्रार्थी को ड्यूटी पर उपस्थित होना तथा उपरोक्त पत्र प्रार्थी को प्राप्त नहीं होना कथन किया है। विपक्षी संस्थान पर औद्योगिक विवाद अधिनियम के प्रावधान लागू नहीं होना कथन किया है। गवाह द्वारा प्रार्थी को बार-बार बुलाने पर भी उसके कार्य पर नहीं आने पर एक अन्य व्यक्ति को कुछ समय के लिये तथा उसके बाद रामकरण को नियमानुसार नियुक्ति दी जानी कथन किया है। विपक्षी गवाह ने अपनी प्रतिपरीक्षा में भी ऐसा कुछ कथन नहीं किया है कि प्रार्थी द्वारा दिनांक 06.08.94 तक कार्य किया गया हो और विपक्षी द्वारा जारी पत्र प्राप्त होने पर वह ड्यूटी पर उपस्थित हुआ हो।

14. प्रार्थी द्वारा अपने तर्कों में 240 दिवस से अधिक काम किया जाना कथन किया है, परन्तु प्रार्थी की ओर से ऐसी कोई दस्तावेजी एवं मौखिक साक्ष्य पेश नहीं की गयी, जिससे यह प्रमाणित होता हो कि प्रार्थी द्वारा लगातार एक वित्तीय वर्ष में 240 दिवस काम किया गया है। उभय पक्षों द्वारा प्रस्तुत दस्तावेजों के आधार पर प्रार्थी द्वारा मात्र दिनांक 20.08.93 से 12.02.94 तक काम करना पाया जाता है। अतः प्रार्थी द्वारा एक कलेण्डर वर्ष में 240 दिवस से अधिक कार्य नहीं किया गया है। अतः प्रार्थी के संबंध में विपक्षी संस्थान पर औद्योगिक विवाद अधिनियम के प्रावधान लागू नहीं होते हैं।

15. प्रार्थी द्वारा 25 एफ की पालना नहीं किये जाने का तर्क दिया गया है। जब प्रार्थी के संबंध में संस्थान पर औद्योगिक विवाद अधिनियम के प्रावधान ही लागू नहीं होते हैं, तो 25 एफ की पालना की जानी आवश्यक नहीं है।

16. प्रार्थी को जारी पत्र प्रदर्ष पी-3 लगायत 7 जारी किये गये हैं, जिनमें स्पष्ट रूप से उल्लेख किया गया है कि आपके ड्यूटी पर उपस्थित नहीं होने पर यह माना जावेगा कि आप कार्य करने के इच्छुक नहीं हैं। प्रार्थी द्वारा प्रदर्ष पी-4 की पालना में ड्यूटी पर उपस्थित होना कथन किया है। परन्तु विपक्षी द्वारा जारी पत्रों के साथ लिफाफे की प्रति भी पेश की गयी है, जिस पर डाक विभाग

की रिपोर्ट अंकित है। इसके अतिरिक्त प्रार्थी द्वारा केवल प्रदर्ष पी-4 प्राप्त होना बताया है, जबकि प्रार्थी को उसके बाद भी प्रदर्ष पी 5 लगायत 7 पत्र जारी किये गये हैं, उसके बाजवूद प्रार्थी ड्यूटी पर उपस्थित नहीं हुआ है। अतः प्रार्थी अपनी मर्जी से ही ड्यूटी से अनुपस्थित रहा है। प्रार्थी प्रतिनिधि की ओर से प्रस्तुत न्यायिक दृष्टांतों के तथ्य एवं परिस्थितियों हस्तगत प्रकरण से भिन्नता रखते हैं, अतः उक्त सभी न्यायिक दृष्टांत प्रार्थी के केस में लागू नहीं होते हैं।

17. उपरोक्त विवेचन के फलस्वरूप स्पष्ट है कि प्रार्थी की नियुक्ति दैनिक वेतन पर बिना कारण बताये, बिना कोई नोटिस दिये सेवा से हटा दिये जाने तथा नियमित पद पर योग्य नहीं होने की शर्त के साथ एक माह के लिये दी गयी थी, जो 179 दिवस की अवधि या नियमित नियुक्ति, जो भी पहले हो, तक के लिये ही सेवाअवधि को बढ़ाया गया था। अतः प्रार्थी की सेवा पूर्णतया अस्थायी थी। प्रार्थी द्वारा एक वर्ष में 240 दिवस काम नहीं किया गया है। अतः औद्योगिक विवाद अधिनियम के प्रावधान लागू नहीं होने से विपक्षी द्वारा 25एफ की पालना की जानी आवश्यक नहीं थी।

18. अप्रार्थी प्रतिनिधि की ओर से प्रस्तुत न्यायिक दृष्टांतों का मैंने बारीकी से अध्योपांत विनम्रतापूर्वक अवलोकन किया। उपरोक्त सभी दृष्टांतों के तथ्य एवं परिस्थितियां हस्तगत प्रकरण के तथ्यों एवं परिस्थितियों से समानता रखते हैं, अतः उक्त सभी न्यायिक दृष्टांत हस्तगत प्रकरण में लागू होते हैं। जिनका प्रभाव यथोचित रूप से ऊपर विवेचना में दिया गया है।

19. उपरोक्त विवेचन के फलस्वरूप प्रकरण में निम्न अवार्ड पारित किया जाता है :-

अवार्ड

“प्रार्थी श्री दशरथ सिंह को विपक्षी प्रिंसिपल, जवाहर नवोदय विद्यालय, कुचामन सिटी द्वारा द्वारा सेवा पृथक किया जाना उचित एवं वैध है। प्रार्थी दशरथ सिंह कोई राहत पाने का अधिकारी नहीं है।”

20. अवार्ड आज दिनांक 10.02.2014 को खुले न्यायालय में लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाषनार्थ नियमानुसार भेजा जावे।

हेमन्त कुमार जैन, न्यायाधीष

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2783.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लक्षद्वीप आइलैंड एडमिनिस्ट्रेटर, लक्षद्वीप एडमिनिस्ट्रेशन एंड आर्थर्स के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/

श्रम न्यायालय, एर्णाकुलम के पंचाट (संदर्भ सं. 30/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.10.2014 को प्राप्त हुआ था।

[सं. एल-42012/30/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2783.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Lakshadweep Island Administrator, Lakshadweep Administration & Others, and their workmen, which was received by the Central Government on 17.10.2014.

[No. L-42012/30/2013-IR (DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL

TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present:

Shri.D.Sreevallabhan, B.Sc., LL.B, Presiding Officer

(Friday the 26th day of September, 2014/4th Asvina 1936)

ID 30/2013

Workmen	:	1. Shri Pookunhi K Transits Accomodation Gandhi Nagar Cochin-20
		2. Shri Darvashkham P P Transits Accomodation Gandhi Nagar Cochin-20
		3. Shri Sayeed K C Transits Accomodation Gandhi Nagar Cochin-20
		4. Shri Saifulla A M Transits Accomodation Gandhi Nagar Cochin-20
		5. Shri Rosambi M P Transits Accomodation Gandhi Nagar Cochin-20
		6. Shri Hussian K K Transits Accomodation Gandhi Nagar Cochin-20
		7. Shri Beefathummab T K Transits Accomodation Gandhi Nagar Cochin-20

8. Shri Sainulabid P Transits Accomodation Gandhi Nagar Cochin-20
9. Shri Anwer Sadiq J S Transits Accomodation Gandhi Nagar Cochin-20
10. Shri Hussain K C P Transits Accomodation Gandhi Nagar Cochin-20
11. Shri Saleem N M Transits Accomodation Gandhi Nagar Cochin-20
12. Shri Abdul Rasheed K S P Transits Accomodation Gandhi Nagar Cochin-20
13. Shri Hameed A C Transits Accomodation Gandhi Nagar Cochin-20
14. Shri Chariyakoya P T Transits Accomodation Gandhi Nagar Cochin-20
15. Shri Sabeer P Transits Accomodation Gandhi Nagar Cochin-20
16. Shri Rahmathulla C Transits Accomodation Gandhi Nagar Cochin-20

By Adv. Shri Anand S A for Workmen Nos.1,3,4,6,11,12, 13 & 14

Managements :

1. The Lakshadweep Island Administrator Lakshadweep Administration Kavaratty
2. Shri Karthikeyan General Manager, SPORTS Society for Promotion of Tourism & Sports Office Kavaratty

By Adv. Shri S Radhakrishnan

This case coming up for final hearing on 23.09.2014 and this Tribunal-cum-Labour Court on 26.09.2014 passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government/Ministry of Labour vide its Order No-L-42012/30/2013-IR(DU) dated 31.05.2013 referred the industrial dispute scheduled thereunder to this tribunal for adjudication.

2. The dispute is:

‘Whether the action of the Society For Promotion of Tourism and Sports in denying the demand of Shri Pookunhi, K. and 16 others to regularize their employment is correct? (list enclosed) If not what relief they are entitled to?’

3. After service of summons workmen Nos.1,3,4,6 and 11 to 14 entered appearance and others remained ex-parte. Those workmen who had entered appearance did not file any claim statement in spite of granting several adjournments. Afterwards they were continuously absenting themselves without any representation and hence they were also set ex-parte.

4. Management has not taken any endeavour to substantiate that the demand of those workmen to regularize their employment is not correct though opportunity was given for that purpose. As the workmen remained ex-parte without filing any claim statement it can be held that there exists no dispute and hence ‘no dispute award’ is passed in this case. The reference is answered accordingly.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 26th day of September, 2014.

D. SREEVALLABHAN, Presiding Officer

APPENDIX - NIL

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2784.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 119/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.10.2014 को प्राप्त हुआ था।

[सं. एल-12012/86/1995-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 20th October, 2014

S.O. 2784.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 119/1997) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial Dispute between the management of the Canara Bank, and their workmen, received by the Central Government on 20.10.2014.

[No. L-12012/86/1995-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
YESWANTHPUR, BANGALORE**Dated : 9th July 2014**PRESENT :**

Shri S N NAVALGUND, Presiding Officer

C R No. 119/1997**I Party**

Sri S Rajanna, S/o S Siddaiah, Thippasandra Hobli, Magadi Taluk, Sankighatta, Bangalore District.

II Party

The General Manager (Personnel), Canara Bank, C.O., NO. 86, M G Road, Bangalore – 560 001.

Appearances:

I Party : Ms. K Sarojini Muthanna, Advocate

II Party : Shri T R K Prasad, Advocate

AWARD

1. The Central Government vide order No. L-12012/186/95-IR(B-II) dated 29.02.1996 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

“Whether the management of Canara Bank, Bangalore is justified in dismissing Sri S. Rajanna, Staff No. 28236, Clerk from service w.e.f. 20.10.90? If not, what relief is Sri Rajanna entitled to and from which date?”

2. On receipt of the reference while registering it in C R 119/1997 when notices were issued to both the sides the I Party workman and the II Party management appeared through their respective advocates and the I party claim statement came to be filed on 20.11.1997 and the counter statement of the II Party on 05.01.1999.

3. After completion of the pleadings my learned predecessor while raising a Preliminary Issue as to

“Whether the II Party proves that the Domestic Enquiry conducted against I Party workman was in accordance with settled principles of law, Bipartite Settlement and principles of natural justice?”,

receiving evidence of the Enquiry Officer for the II Party and of the I Party workman and hearing their learned advocates by order dated 26.07.1999 answered the said

issue in the affirmative i.e., the Domestic Enquiry held against the I party by the II Party is Fair and Proper and then another succeeding Presiding Officer after hearing the arguments of the learned advocates appearing for both sides on merits by award dated 17.10.2002 rejected the reference. The said Award was when challenged by the I Party before the Hon'ble High Court of Karnataka in W P No. 51546/2003 (L-TER), the Hon'ble High Court by order dated 14.08.2007 arriving at conclusion this court did not apply its mind as to the defence taken by the claimant/I Party and more over he was not given an opportunity to represent his case quashed the said award and remitted back the reference for fresh consideration in accordance with law after affording an opportunity to the claimant/I Party if need be to the management and then pass the orders. On receipt of the order of the Hon'ble High Court of Karnataka again re-registering the reference in its original number when notices were issued to both the sides they entered their appearance through their respective advocates and on application by the advocate for the I Party he was allowed to lead evidence on the points of victimization and being not gainfully employed and accordingly he filed his affidavit and examined himself as WW 1 (V) and was cross-examined by the learned advocate for the II party and no rebuttal evidence adduced on behalf of the II Party. Then the arguments addressed by learned advocates appearing for both sides were heard.

4. The brief facts leading to this reference and award may be stated as under.

5. The I Party who joined the services of the II party bank as probationary clerk and was serving at its Kunigal Branch, on 09.11.1989 he was placed under suspension alleging that he has committed certain gross misconduct and then by obtaining an investigation done on the alleged misconduct through Sh. S Gurunath issued with charge sheet dated 07.03.1990 as under :

“Charge Sheet

You are working at our Kunigal branch since 02.12.1985.

On 18.10.89, you were working in the department comprising Current Account/OD/OCC/VSL/GL and minor subsidiaries. On that day, you told the Second Line Manager Sri G R Rao that some of the operative Current & OD Account-holders have inoperative Current Accounts and you would transfer the balance in such inoperative accounts to operative accounts of the parties and prepared the following Debit & Credit slips:

Debit from	Credit to	Amount
Inoperative Current Account of Sri B K Gopalakrishna	Operative OD A/c No. of Sri B.K. Gopalakrishna	Rs. 960/-

Inoperative Current Account of Sri Jayaprakash	Operative Current A/c. of Sri K Jayaprakash	Rs. 187.11
Inoperative Current Account of M/s. Sudha Printers	Operative Current A/c. of M/s. Sudha Printers	Rs. 290/-
Inoperative Current Account of M/s. Siddeshwara Service Station	Operative Current A/c. of M/s. Siddeshwara Fertilisers	Rs. 5700/-

You had taken the above slips personally to Sri G R Rao, Second Line Manager, surpassing the Current Account Supervisor Sri K Anjanappa on the plea that the transfer of funds from the inoperative accounts was to be authorised only by Manager. Since the Manager was busy, he had authenticated the slips without verification.

While verifying the above slips on 23.10.89, Sri G. R. Rao, II Line Manager, observed that you had transferred a sum of Rs. 5700/- from Inoperative Current Account of M/s. Siddeshwara Service Station to M/s. Siddeshwara Fertilisers knowing very well that the Proprietors of the above firms are different.

The investigation in the matter has revealed that you had contacted Sri K R Sadashiva, Proprietor of M/s. Siddeshwara Fertilisers on 17.10.89 evening & 18.10.89 morning and informed him that you had been sanctioned a Crop Loan and the fertiliser component of Rs. 5700/- would be credited to Current Account of M/s. Siddeshwara Fertilisers. You further told Sri K R Sadashiva to pay you Rs. 5200/- and to adjust the remaining Rs. 500/- towards the amount you owed to him. Accordingly, Sri K R Sadashiva came to the branch on 18.10.89 & drew a Self cheque for Rs. 5200/- obtained the token No. 12 and handed over the token No. 12 to you for collecting the amount. Later you had collected the cash of Rs. 5200/- from the Cashier.

On knowing from the Senior Manager that no crop loan had been sanctioned to you and credit of Rs. 5700/- given to the Current Account of M/s. Siddeshwara Fertilisers on 18.10.89 was wrong one, Sri K R Sadashiva instructed you to recredit the amount of Rs. 5700/-. Accordingly, you had remitted cash of Rs. 2000/- on 2.11.89 & Rs. 3700/- on 9.11.89 to the Current Account of M/s. Siddeshwara Fertilisers.

By your act of mis-representing the facts to the Bank and to the customer and misappropriating the amount of Rs. 5200/-, you have committed gross misconduct as per Chapter XI Regulation 3 clause (j) of Canara Bank Service Code.

All your above actions being prejudicial to the interests of the Bank, you have committed gross misconduct as per Chapter XI Regulation 3 clause (m) of Canara Bank Service Code.

Deputy General Manager”

and ordered for holding Domestic Enquiry by appointing Sri B V Janardhan, Manager as Enquiry Officer and S Balasubramanya as Presenting Officer. Then the Enquiry Officer securing the presence of I Party by issue of notice observing the formalities of preliminary hearing while receiving the evidence of Sri S Gurunath, Investigating Officer; Sri A P Pai, Senior Manager; Smt. Sajeeda Begum, Clerk; Sri G R Rao, II Line Manager; Sri K Anjanappa, Officer; Sri C R Madhagastha, Clerk; Sri K R Sadashiva, Proprietor, Siddeshwara Fertilisers, Kunigal tendered by the Presenting Officer as MW s 1 to 7 respectively and exhibiting Investigation report of Sri S. Gurunath; Statement of Sri G R Rao, Manager, Kunigal Branch to Investigating Officer; Statement of Sri S Rajanna, Clerk, Kunigal Branch to Investigating Officer; Statement of Sri K R Sadashiva, Proprietor, Siddeshwara Fertilisers, Kunigal to Investigating Officer; Statement of Smt. Sajeeda Begum, Clerk, Kunigal Branch, to Investigating Officer; Statement of Sri R. Madhyastha, Clerk, Kunigal Branch, to Investigating Officer; Statement of Sri B K N Murthy, Clerk, Kunigal Branch, to Investigating Officer; Ledger Sheet No. 902707 of Current Account No. 65 of M/s. Siddeshwara Fertilisers; Ledger Sheet No. 686995 of CA 58 of M/s. Siddeshwara Service Station; Current Account Ledger Sheet 986950 of Current Account 61 of M/s. Sudha Printers; Ledger Sheet No. 395017 of Current Account No. 3 of Sri B K Gopalakrishna; Subsidiary Sheet No. 176207 of Current Account (from 14.10.1989 to 9.11.1989); Current Account Chalan dated 9.11.1989 for Rs. 3700/- in respect of cash remitted to M/s. Siddeshwara Fertilisers; Current Account pay in slip dated 2.11.1989 for Rs. 2000/- in the account of M/s. Siddeshwara Fertilisers; Debit slip dated 18.10.1989 for Rs. 5700/- debiting inoperative a/c of M/s. Siddeshwara Service Station; Credit slip dated 18.10.1989 for Rs. 5700/- credited to M/s. Siddeshwara Fertilisers; Debit slip dated 18.10.1989 for Rs. 187.11 debiting inoperative Current Account of K. Jayaprakash; Credit slip dated 18.10.1989 for Rs. 187.11 crediting operative Current Account of Sri K Jayaprakash; Debit Slip for Rs. 290/- dated 18.10.1989 debiting M/s. Sudha Printers (inoperative a/c); credit slip dated 18.10.1989 for Rs. 290/- crediting OD a/c of M/s. Sudha Printers; Dr. slip dated 18.10.1989 for Rs. 960/- debiting Current Account of Sri B K Gopalakrishna; Credit Slip dated 18.10.1989 for Rs. 960/- crediting OD A/c of Sri B K Gopalakrishna; Debit Slip dated 14.10.1989 for Rs. 11896.45 crediting Current Account inoperative ledger; Cheque No. 013683 dated 18.10.1989 for Rs. 5200/- drawn by M/s. Siddeshwara Fertiliser, Current Account 65; Current Account balancing book pertaining to Kunigal Branch (dated 14.10.1989 & 19.10.1989); Letter 10/HO/616/89 dated 27.10.1989 of Kunigal Branch to Circle Office, Bangalore; Letter dated 20.3.1989 of Sri G R Rao, II Line Manager, Kunigal Branch; Letter No. 10/HO/660/89 dated 6.11.1989 of Kunigal Branch to Circle Office, Bangalore and Letter dated 6.11.1989 of

Sri K R Sadashiva, Proprietor, Siddeshwara Fertilisers, Kunigal as Ex.M-1 to Ex.M-31 respectively and after of close the evidence of the management since the I Party did not choose to examine any witnesses and rest contended by giving his statement in writing after receiving the written brief from the Presenting Officer and the I Party preparing his enquiry finding the charge as proved and the appropriate punishment would be dismissal he issued a notice to the I Party on the same day i.e. 23.08.1990 to show cause why he should not recommend for imposing the punishment of dismissal and after hearing him on 05.09.1990 he submitted his enquiry finding to the Disciplinary Authority proposing for dismissal and then the Disciplinary Authority by his order dated 20.10.1990 accepted the enquiry finding and the proposal made by the Enquiry Officer for inflicting the punishment of dismissal and communicated the same to the I Party. Then, the I Party when preferred appeal dated 07.03.1991 to the General Manager, the Appellate Authority after affording an opportunity of hearing to the I Party observing that there were no reasons to interfere either with the findings of the Enquiry Officer or the punishment imposed dismissed the appeal by his order dated 20.11.1991. Then the I Party after lapse of four years when approached the Assistant Labour Commissioner (C), K G F for conciliation, the said ALC(C) registering it in File No. 7(3)95-A/K since submitted failure report to the Ministry, the Ministry made this reference for adjudication on the following schedule :

“Whether the management of Canara Bank, Bangalore is justified in dismissing Sri S. Rajanna, Staff No. 28236, Clerk from service w.e.f. 20.10.90? If not, what relief is Sri Rajanna entitled to and from which date?”

6. Since as already adverted to by me above, my learned predecessor has held the Domestic Enquiry conducted by the II Party against the I Party as fair and proper by order dated 26.07.1999 and same is not disturbed in the Writ Petition filed by the I Party after award dated 17.10.2002 was passed and the evidence of the I party has been received on the alleged victimization and being not gainfully employed the points that now arises for my consideration are:

Point No.1 : Whether the finding of the Enquiry Officer the charge being proved is perverse?

Point No. 2 : If not, Whether the punishment of dismissal imposed by the Disciplinary Authority accepting the proposal made by the Enquiry Officer which has been upheld by the Appellate Authority is disproportionate?

Point No. 3 : What Order/Award?

7. On appreciation of the pleadings, oral and documentary evidence brought on record in the Domestic

Enquiry in the light of the arguments advanced before me my finding on Point No. 1 and 2 are in the Negative and Point No. 3 as per final order for the following

REASONS

8. **Point No. 1 :** Since the I Party in the Domestic Enquiry unequivocally admitted that he did told the II Line Manager Sh. G R Rao some of the operative, current and OD Account holders have inoperative current accounts and that he will transfer the balances from the inoperative accounts to their operative accounts and that accordingly he transferred amounts as indicated on page 2 of the Charge Sheet and also prepared the corresponding debit and credit slips as mentioned therein and also had taken the debit and credit slips in connection with the transfer of amounts to II Line Manager, Sh. G R Rao without bringing to the knowledge of Sh. K Anjanappa the Current Accounts Supervisor of the branch and that on 18.10.1989 Sh. K R Sadashiva, Proprietor of Siddeshwara Fertilisers came to the Bank and gave a self cheque for Rs. 5200.00 and obtained token No. 12 and handed over the same to him for collecting the amount and accordingly he collected cash of Rs. 5200.00 and further on 02.11.1989 and 09.11.1989 he did remit cash of Rs. 2000.00 and Rs. 3700.00 respectively to the Current Account of Siddeshwara Fertilisers, the only aspect that is to be seen is whether this act on the part of I Party was bonafide or made inadvertently under the impression that the proprietor of M/s. Siddeshwara Service Station and M/s. Siddeshwara Fertilisers were one and the same as tried to be made or tried to be explained by him. Before I proceed to consider whether it was his bonafide or inadvertent act, I wish to place here with regard to his admission which I referred to above from his statement to the Charge as well as the statement he has given in his own hand writing after the evidence of the management was concluded which reads as under :

the extract from the proceedings of the Enquiry Officer dated 28.05.1990

“E.O. Please identify yourself.

CSE I am S.Rajanna, Staff No. 28236, Clerk (U/S) at our Kunigal Branch.

E.O. Have you received the above referred chargesheet

CSE Yes

E.O. Have you gone through the same and understood its contents

CSE Yes

E.O. Do you admit the charges?

CSE I would like to make the following admissions:

(1) It is a fact that I told the II Line Mgr. of our Branch Sri G R Rao that some of the operative current and OD A/c Holders have inoperative current accounts and that I will be transferring the balances in these inoperative accounts to operative accounts of the parties.

(2) It is also a fact that I have transferred amounts as indicated on page 2 of the charge sheet and also prepared the corresponding debit and credit slips in these connections i.e. (a) Rs. 960/- from the inoperative current a/c of Sri B K Gopalakrishna to the operative OD a/c of this party. (b) Rs. 187.11 from the inoperative current a/c of Sri K Jayaprakash to his operative current a/c (c) Rs. 290/- from the inoperative current a/c of M/s. Sudha Printers to their operative current (d) Rs. 5700/- from the inoperative current a/c of M/s. Siddeshwara Service Station to operative current a/c of M/s. Siddeshwara Fertilisers.

(3) It is also a fact that I had taken the debit and the credit slips in connection with transfer of amounts as above to II Line Mgr. of our Branch Sri G R Rao without bringing this matter to the knowledge to Sri K Anjanappa who was the current a/c supervisor of the Branch on the basis that such transfer of funds from inoperative accounts was to be authorised by the manager only.

(4) It is a fact that on 18.10.1989 Sri K R Sadashiva, Proprietor of Siddeshwara Fertilisers came to our Kunigal Branch and he has drawn a self cheque for Rs. 5200/- and obtained token No. 12 and handed over the said token to me for collecting the amount. It is also a fact that I collected cash ; of Rs. 5200/- towards this from the cashier.

(5) It is a fact that on 2.11.1989 and 9.11.1989 I remitted cash of Rs. 2000/- and Rs. 3700/- respectively to the current a/c of Siddeshwara Fertilisers at the branch.

I deny all other allegations against me contained in the above charge sheet."

the extract from his statement given after the evidence of the management

I admit that I had told the II Line Manager of our Branch Sri G R Rao that I will be transferring some inoperative current accounts to operative current account and vice versa. I initiated the move to reduce the work load and to make the department comprehensive."

9. Moreover, the evidence adduced by management on these aspects through MWs 2 to 6 has not been challenged by their cross-examination. If at all the act of the I Party transferring the amount of Rs. 5700.00 from the inoperative account of M/s. Siddeshwara Service Station to the operative account of M/s. Siddeshwara Fertilisers was not qualified with any other involvement of him in drawing that amount transferred to Siddeshwara Fertilisers and recrediting the same his defence that the act of transfer was bonafide or inadvertently made would

have been probable/acceptable but the evidence on record adduced through MW 7 Sh. K R Sadashiva, Proprietor of M/s. Siddeshwara Fertilisers when do suggest that just a day before the amount was transferred i.e., 17.10.1989 and also on the date on which the amount was transferred i.e. 18.10.1989 he did contact him i.e. Sh. K R Sadashiva/MW 7 to whose account M/s. Siddeshwara Fertilisers the amount from M/s. Siddeshwara Service Station was transferred and made him to believe that a crop loan of Rs. 5700.00 sanctioned in his/I Party favour being credited to his Current Account M/s. Siddeshwara Fertilisers requested him to draw the said amount and to pay him cash of Rs. 5200.00 after adjusting Rs. 500.00 taken from him and accordingly on 18.10.1989 itself the said Sh. K R Sadashiva, Proprietor of M/s. Siddeshwara Fertilisers presented a Self cheque No. 013683 for Rs. 5200.00 and handed over the token to him/I Party and he/I Party collected that amount, in the absence of any evidence to believe his/I Party version that he just collected that amount on behalf of Sh. K R Sadashiva from the Cash Counter and handed over it to Sh. K R Sadashiva the imputation made against him cannot be disbelieved. Though Sh. K R Sadashiva, Proprietor of M/s. Siddeshwara Fertilisers examined as MW 7 in the enquiry categorically confirmed the above fact appearing in his written statement given to the Branch Manager as well as before the Investigating Officer produced at Ex M-31 and M-4 respectively, I party has not challenged the same in his cross-examination. What all he asked in his cross-examination reads as under :

"CSE – It is alleged against me by the Bank that I have taken Rs. 5200/- represented by Ex M26. Can you tell me whether this is taken by me or you yourself?

MW 7 – the cash has been taken by Shri Rajanna only.

CSE – You had given the token to me in respect of this cheque. Have I not handed over the amount of Rs. 5200/- to you?

MW 7 – I have not received the amount from Shri Rajanna in respect of the Cheque 013863 for Rs. 5200/- dt. 18.10.1990."

10. Since the defence/version of I Party that Sh. K R Sadashiva had given him the token just to collect the amount from the cash counter and to hand over it to him do suggest that he was very much acquainted with him as such he was not knowing the Proprietor of M/s. Siddeshwara Fertilisers and M/s. Siddeshwara Service Station were different while making transfer is unbelievable. If at all as tried to be made out by the I Party the Proprietor of M/s. Siddeshwara Fertilisers namely Sh. K R Sadashiva on 18.10.1989 after tendering the cheque for Rs. 5200.00 and collecting the token handed over the token to him/I Party just to collect the amount and to hand over the same

later on there was no reason for Sh. K R Sadashiva to impute him/I Party as made out in his statement marked as Ex M-4 and evidence given in the enquiry. Absolutely, no reasons are brought out in the cross-examination of Sh. K R Sadashiva/MW 7 for falsely implicating him in this fashion. Under the circumstances, the explanation or defence that is tried to be made out by the I Party is unacceptable and there are no reasons to say that the finding of the Enquiry Officer charge being proved as perverse. Accordingly, I arrive at conclusion of answering this Point in the negative.

11. Point No. 2 : Since the act on the part of the I Party managing to transfer the balance in the inoperative current account of M/s. Siddeshwara Service Station to the Operative Current Account of M/s. Siddeshwara Fertilisers the Proprietor of which were all together different and collecting the said money from the proprietor of M/s. Siddeshwara Fertilisers since amounts to a grave misconduct continuing of whom in the services of the Bank was unsafe in the interest of customers of the Bank as well as the Bank, absolutely, I find no reasons to say the punishment imposed against him by the Disciplinary Authority Dismissing him from service as disproportionate. Accordingly, I have arrived at conclusion of answering this point in the Negative.

12. Point No. 3 : In view of my finding on Point No. 1 and 2, I have no other go except to say the action of the management as justified. In the result, I pass the following

ORDER

The action of the management of Canara Bank, Bangalore in dismissing Sri S. Rajanna, Staff No. 28236, Clerk from service w.e.f. 20.10.1990 is justified and that he is entitle for any relief.

(Typed to my dictation by UDC, corrected and signed by me on 9th JULY, 2014)

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2785.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधन के संबंध निर्योजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 73/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.10.2014 को प्राप्त हुआ था।

[सं. एल-12012/50/2008-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 20th October, 2014

S.O. 2785.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (Ref. No. 73/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial Dispute between the management of Indian Bank, and their workmen, received by the Central Government on 20.10.2014.

[No. L-12012/50/2008-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, YESWANTHPUR, BANGALORE

DATED : 16th JULY, 2014

PRESENT :

Shri S N NAVALGUND, Presiding Officer

C R No. 73/2008

I Party

Sh. Suryakant S Ratkalle, Indian Bank, C/o Ram Mahaev Apte, Advocate, 1668/3, Ramling Khind, BELGAUM – 590001.

II Party

The Branch Manager, Indian Bank, Khade Bazar Branch, BELGAUM.

Appearances:

I Party : Shri R M Apte Advocate

II Party : Shri G N Raichur Advocate

AWARD

1. The Central Government vide order No. L-12012/50/2008-IR(B-II) dated 17.10.2008 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

“Whether the alleged illegal termination and claim for reinstatement into service with backwages by Sri Suryakant S. Ratkalle against the management of Indian Bank is legal and justified? What relief the workman is entitled to?”

2. On receipt of the reference while registering it in C R 73/2008 when notices were issued to both sides they entered their appearance through their respect advocates and claim statement came to be filed on 03.03.2010 and counter statement on 24.11.2010.

3. The I party in his claim statement asserts that he was taken by the II party as Casual Attender on Daily Wages in the year 1992 and engaged intermittently for a few days in a month till 1996 showing the payments made by him in their records as miscellaneous expenses and from May 1997 onwards till December 2000 his services were taken continuously except the intervening holidays and the days he availed leave and wages paid to him in the year 1997 are debited as amount paid to an officer for TA and in respect of the payments made to him from 1998 onwards till December 2000 as maintenance of premises (MOP). It is further asserted that in the initial years the rate of daily wages was Rs. 25/- later increased from time to time upto Rs. 80/- and abruptly from 06.11.2000 it was reduced to Rs. 50/- per day and with malafide intention his service was discontinued for two weeks w.e.f. 13.11.2000 saying that thereafter he would be engaged for only two weeks in a month. Then through his lawyers notice dated 20.11.2000 informed the said facts to the Chairperson and Managing Director of the Bank with request to withdraw the steps taken by the Belgaum Branch Manager of unlawfully reducing the rate of wages and creating an artificial break and to absorb him as a regular and permanent employee of the Bank either in the existing vacancy at Belgaum or at any other place convenient to him but the II Party instead of giving due consideration to the contents of the notice and redressing his legitimate grievances informed its concerned officers to take action against him and thereafter the Branch Manager on 07.12.2000 at the end of the working hours informed him his services are no more required from the following day which amounts to illegal retrenchment within the meaning of Section 2(oo) of the Industrial Dispute Act being violative of provisions of Section 25(f) and 25(n). He has further asserted that there were three sanctioned posts of Sub-staff and Sweeper at the Belgaum Branch of the II Party namely One Daftry, One Attender, One Sweeper and out of them on 29.02.1996 when Sh. Shankarlal Chauhan retired the same was vacant and no regular permanent employee was appointed against that vacancy, therefore, he is entitle for reinstatement in the services of the Bank with full backwages and other consequential benefits.

4. The II party in its counter statement contends that its recruitment rules for sub-staff either on permanent or temporary basis are being as under :

“The General Manager in charge of HRM Department at the Corporate Office should sanction the vacancy.

After getting the sanction, indent is required to be placed with the employment exchange as per the eligibility criteria duly signed by the Assistant General Manager and counter signed by the Circle Head.

On receiving the list of the candidates so sponsored by the Employment Exchange, candidates to be interviewed. After medical examination of the candidates selected in the order of merit have to be appointed in Bank service on probation.”

at no point of time it neither appointed nor issued any appointment letter to the I Party as such there exists no relationship of employer and employee between them as such the dispute is outside the purview of the ID Act, 1947. It is further contended any engagement of the I Party by the Branch if any is in accordance with Section 2(oo) (bb) of the ID Act, 1947 as such the contention of the I Party that he is illegally retrenched does not hold any water. It is also contended that in view of the observations of the Hon'ble Supreme Court entertaining such claims amounts to back door entry and is not permissible. It is further contended that there is no oral termination as alleged since its Branch Manager's are not the appointing authorities for the sub-staff and that every branch is given daily maintenance allowance which will be spent by the Branch Manager's as per requirement and amount paid from such fund cannot be treated as Wage as claimed by the I Party. Further denying that there was vacancy and against the same the I Party was engaged and that as per its information he has been running a telephone booth as such he is not entitle for any of the reliefs asked for by him.

5. After completion of the pleadings when the matter was posted for evidence the Learned Advocate appearing for the II party while filing the affidavit of Sh. B M Parvathikar claims to have served as Branch Manager in Belgaum Branch of the II Party from 1999 to 2002 examined him on oath as MW 1 and closed his side, whereas, the Learned Advocate appearing for the I Party while getting exhibited letters addressed by MW 1 to other banks dated 22.10.1999, 15.11.1999, 15.02.2000, 03.03.2000, 24.05.2000 and 08.11.2000 under his signature; four debit slips dated 15.11.1999, 03.10.2000, 06.11.2000 and 09.11.2000 under his signature; copy of the I Party application dated 12.12.2000 to furnish extract of the pass book along with the reply of the then Manager; letter addressed by the Manager to I Party regarding his request for New Pass Book as Ex W-1 to Ex W-11 and Ex W-1(a) to Ex W-10(a) in the cross-examination of MW 1 by filing the affidavit of I Party workman swearing to the facts of the claim statement examining him on oath as WW 1 got exhibited copies of 15 letters issued by the Manager, Belgaum Branch to different bank managers through I Party; copies of two consolidated bills in respect of Honorarium of State Government Freedom Fighters sent through I Party; copies of four vouchers for having made payment to the I Party; copy of letter dated 18.01.2000 addressed by the Assistant General Manager to the Zonal Office; copy of translation of news item in

Tarun Bharat daily dated 15.01.1997; credit voucher dated 19.05.1998; two copies of lawyer notices dated 20.11.2000 and 16.01.2001; Original Pass Book in respect of I Party; copy of letter addressed by one Angallar to the General Secretary of Indian Bank Employees Union dated 24.05.1999 to take up the cause of I Party as Ex W-12 to Ex W-14 series, Ex W-15 to Ex W-17, Ex W-18 series, Ex W-19 and Ex W-20. The learned counsel for the I Party also while filing the affidavit of two ex-employees of the II Party Bank namely Sh. P B Murgol and Smt. Shailaja K Patil examined them as WW 2 and 3 respectively.

6. With the above pleadings, oral and documentary evidence, arguments addressed by both sides were heard.

7. The learned advocate appearing for the I Party urged that though the II party taken the services of I Party from the year 1992 till 1996 intermittently paying daily wages since shown it as miscellaneous expenses in its accounts and taken his service continuously from May 1997 till December 2000 for the payments made in the year 1997 shown as TA paid to Officer of the Bank and from May 1998 to December 2000 for maintenance of premises it is an unfair labour practice played by the II party bank as such denying him work from 08.12.2000 amounts to illegal retrenchment and he is entitle for reinstatement, absorption as a permanent sub-staff, full backwages and all other consequential benefits. In support of his arguments he cited the decisions reported in ILR 2001 KAR 3407 between UPSRTC, Kanpur and another vs. Roadways Karmachari Sanyukt Parishad, UP and 2013 LLR 1140 between State of Karnataka & others vs. H Ganesh Rao and others. Inter alia, the learned advocate appearing for the II party urged that there being no iota of evidence the I Party having continuously worked for 240 days in a calendar year nor evidence having received wages his claim that he had intermittently worked between 1992 to 1996 and continuously from May 1997 to December 2000 being baseless and as there was no sanctioned post of Sweeper the Branch Manager by making payment under the amount allotted for maintenance might have taken the services of I Party for the purpose of Sweeping and made payments from such fund as such his claim that he is a workman of the II Party and is entitle for reinstatement, backwages, etc., is unsustainable.

8. On appreciation of the pleadings, oral and documentary evidence brought on record in the light of the arguments put forward by the learned advocates for both sides, I am of the opinion that I Party failed to prove that his services was availed by the II Party against sanctioned post intermittently between 1992 to 1996 and continuously from May 1997 to December 2000 and illegally terminated/ retrenched w.e.f. 08.12.2000 and that

he is entitle for reinstatement, backwages, continuity of services etc., for the following

REASONS

9. The I Party who alleges in the claim statement that for his alleged services intermittently between 1992 to 1996 the payments made to him were debited as Miscellaneous Expenses and the payments for his continuous service from May 1997 till May 1998 as TA to an Officer and from May 1998 to December 2000 as maintenance of premises is not supported by any evidence except his allegations in the claim statement and the self swearing statements in his affidavit filed in lieu of the evidence and the bald statements of two ex-employees examined as WW 2 and WW 3 not probablised by any circumstances. Therefore, the claim made on his behalf that his services on daily wages were availed by the II Party against a vacant existing post is not supported by any evidence. In the two decisions cited by the Learned advocate appearing for the I Party reported in ILR 2001 KAR 3407 and 2013 LLR 1140 on facts it was held that the Services of a Workman were being taken for long period against vacant existing post on daily wages it was unfair labour practice on the part of the management and those workmen were entitle for regularisation/absorption prospectively from the date of Award. From the evidence on record as urged on behalf of the II party the Branch Manager of Belgaum Branch of the II Party may have taken the services of I Party for the purpose of Sweeping the premises making him payment from the allowance provided under maintenance of premises at his disposal and such payments made to the I Party for his services cannot be treated as wages or him as a workman of the II Party. Moreover, there being no positive cogent evidence the I Party having continuously worked for a period of 240 days in a calendar year just allegedly asking him not to come to work from a date alleged by him as 08.12.2000 it cannot be termed or treated as an illegal retrenchment. Under the circumstances, I have arrived at conclusion that the alleged illegal termination and claim for reinstatement into service with backwages by Sh. Suryakat Ratkalle is not legal and justified and that he is not entitle for any relief. In the result, I pass the following

ORDER

The Reference is Rejected holding that the alleged illegal termination and claim for reinstatement into service with backwages by Sri Suryakant S Ratkalle against the management of Indian Bank is illegal and not justified and he is not entitle for any other relief.

(Typed to my dictation by U D C, corrected and signed by me on 16th July 2014)

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2786.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 57/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.10.2014 को प्राप्त हुआ था।

[सं. एल-12012/91/2006-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 20th October, 2014

S.O. 2786.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 57/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial Dispute between the management of the Canara Bank, and their workmen, received by the Central Government on 20.10.2014.

[No. L-12012/91/2006-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT YESWANTHPUR, BANGALORE

DATED : 29th September, 2014

PRESENT:

Shri S. N. NAVALGUND, Presiding Officer

C R No. 57/2007

I Party

Sh. V Munirathnam, No. 26/1, 8th Main Road, Srinivasanagar, BANGALORE – 560 050.

II Party

The General Manager (P), Canara Bank, Head Office, Personnel Wing, I R Section, 112, J C Road, BANGALORE – 560 002.

Appearances:

I Party : Shri Muralidhara, Advocate

II Party : Shri T R K Prasad, Advocate

AWARD

1. The Central Government vide order No. L-12012/91/2006-IR(B-II) dated 20.04.2007 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

“Whether the action of the management of Canara Bank in imposition of punishment of compulsory retirement on Shri V Munirathnam, Ex-Clerk, Canara

Bank, Bevoor Branch, Bangalore Rural District w.e.f. 01.01.2001 is legal and justified? If not, what relief the workman is entitled and from which date?”

2. On receipt of the reference while registering it in CR 57/2007 when notice were issued to both the sides, they entered their appearance through their respective advocate and I party filed his claim statement on 17.08.2007 and II Party its counter Statement on 28.03.2008.

3. The I Party in his claim statement besides contending that the enquiry finding was baseless and perverse and that the enquiry was not conducted in fair and proper manner and on the basis of such enquiry finding the punishment of compulsory retirement imposed by the Disciplinary Authority which is upheld by the Appellate Authority is not sustainable etc., and the II Party in its counter statement while contending that the Enquiry Officer conducted the enquiry affording all fair and proper opportunities to the CSE/I Party and based on the evidence placed before him he submitted the enquiry finding charge being proved and there after the Disciplinary Authority affording an opportunity of hearing giving cogent reasons taking into account the I Party is a handicapped person imposed the punishment of compulsory retirement though the punishment of dismissal could have been imposed and on appeal the Appellate Authority also while affording opportunity of hearing giving cogent reasons having upheld the enquiry finding and the punishment imposed there are no reasons to interfere either in the finding of the Enquiry Officer or the punishment imposed the reference is liable for rejection. In view of the assertion of the I Party that the enquiry was not fair and proper while framing a Preliminary Issue as to

Whether the Domestic Enquiry held against the I Party by the II party is fair and proper?

receiving the evidence adduced by both the sides and hearing their learned advocates the said issue was being answered in the affirmative i.e., the Domestic Enquiry held against the I Party by the II party is fair and proper, the I Party was called upon to lead evidence on the points of victimization if any and being not gainfully employed. Accordingly, the Learned Advocate appearing for the I Party while filing the affidavit of I Party examined him on oath as WW 1 (V) and counsel for II Party who cross-examined him did not lead any rebuttal evidence. Then the arguments addressed by learned advocate appearing for both sides were heard.

4. The brief facts leading to this reference and award may be stated as under.

5. The I Party who was appointed as Clerk in the II Party Bank on 09.02.1981 while serving at its Bevoor Branch on 17.06.2000 served with the charge sheet as under :

“CHARGE SHEET

You are working as Clerk at our Bevoor branch since 30th May 1998.

You are in the habit of remaining absent more frequently and unauthorisedly, without intimation, submitting proper leave application or obtaining prior permission/sanction from the Competent Authority, in utter violation of leave rules of the Bank.

You were earlier charge sheeted on 6 occasions for remaining absent unauthorisedly in violation of leave rules of the Bank and appropriate punishment were imposed on you. The details are furnished below:

CHARGE SHEET NO.	DATE	PUNISHMENT AWARDED
BLC:DAC:600:E.37: CH 52/91	22.4.91	Warned
BLC:DAC:2006:E.37: CH 6/92	07.2.92	Stoppage of inc. for 6 months
BLC:DAC:2055:E.37: CH30/93	22.4.93	Stoppage of inc. for 6 months
BLC:DAC:301:E.37: CH 12/97	14.2.97	Stoppage of 1 inc. for 1 Year
BLC:DAC:3017:E.37: CH 8/98	17.4.98	Stoppage of four increments

In spite of initiating disciplinary action and imposing appropriate punishments as stated above, you have neither chosen to improve your leave record nor adhere to the leave rules of the Bank, thereby affecting the smooth functioning of the branch.

In the instant case, you are remaining absent from duties since 16.8.1999. You had, vide your letter dt. 16.8.99, received by the branch on 8.9.99, requested for appropriate category of leave for the period from 16.8.99 to 8.9.99. You should have reported back for duties on 9.9.99. However, you have sought extension of leave vide your application dated 10.9.99, 1.10.99, 20.10.99 and 16.1.99 received by the branch on 22.9.99, 16.10.99, 20.10.99 and 3.12.99 respectively till 4.12.99.

Staff Section (W), BCD vide their letter No. BLSW:E.13:24971:99 dt. 11.12.99 had instructed you to report back for duties immediately. However, you had failed to report back for duties and continued to remain absent unauthorisedly. The above letter sent to your last known address has been returned undelivered.

You have, further sought extension of leave from 24.12.99 to 22.1.2000 on the ground of sickness. You have not submitted the leave application for the period from 5.12.99 to 23.12.99.

An employee seeking privilege leave has to give requisite one month's notice and obtain sanction before proceeding on leave. Similarly, an employee seeking leave on medical grounds has to submit the leave application immediately on remaining absent, duly supported by a Medical Certificate issued by a

Regd. Medical Practitioner recommending leave for a specified period. The Medical fitness Certificate has to be submitted while rejoining the duties. The employee seeking extension of leave has to submit the leave application before the expiry of the leave period already sought/ sanctioned and obtain sanction before the commencement of extended period of leave.

You have failed to comply with the above requirements of the leave rules of the Bank. Your leave record is a dismal reflection of your poor attendance to the Bank and scant regard you have towards adherence to the leave rules of the Bank. So far, your absence for 285 days have been treated as on 'Loss of Pay', besides treating 1142 days as 'Absence without leave' and hence on 'Loss of Pay'.

By your above action of remaining absent continuously and unauthorisedly for a period of more than 30 days, you have committed 'GROSS MISCONDUCT' within the meaning of Chapter XI, Regulation 3, Clause (r) of Canara Bank Service Code.

By your above action of not adhering to the leave rules of the Bank in spite of clear instructions from your higher authorities, you have disobeyed the lawful instructions of your superiors and committed Gross Misconduct within the meaning of Chapter XI Regulation 3(d) of Canara Bank Service Code.

Your actions being prejudicial to the interest of the Bank, you have also committed 'Gross Misconduct' within the meaning of Chapter XI Regulation 3, Clause (m) of Canara Bank Service Code.

DEPUTY GENERAL MANAGER"

- On 1 Party in his reply dated 14.07.2000 without disputing being charge sheeted and punished earlier as mentioned in the charge sheet since stated as his sister lost her husband in May 1999 and became a psychic patient he had to look after her treatment and conduct ceremonies of his brother-in-law and in August 1999 he lost his another uncle who was issueless he had to perform his ceremonies and rights and added to it as he slipped down and sustained hurt in left leg which has limited movements and has become immobilized he was to take treatment at his native place with nati vaidya and due to this unfortunate incidents he was compelled to remain absent and that he submitted leave applications and sent telegram to the branch for sanction of leave from 05.12.1999 to 24.12.1999 and that its letter No. BLSW/E13/24971/99 dated 11.12.1999 was not delivered as he was in native place taking treatment for the injury to his left leg the absence may be viewed leniently and sympathetically. The Disciplinary Authority being not satisfied with the said reply which was not accompanied with any material/enclosures supporting the facts he narrated in the reply

ordered for holding the Domestic Enquiry appointing Sh. V R Iyengar as Enquiry Officer and Sh. P Shivaramu as Presenting Officer by orders dated 24.07.2000. Then the Enquiry Officer while causing the notice to the CSE/I Party and the management representative securing their presence observing the formalities of preliminary hearing while recording the evidence of Sh. G S V Babu, Officer and Sh. S Narasinga Rao as MWs 1 and 2 and exhibiting Charge Sheet No. BLC:DAC:600:E-37:CH-52/91 dated 22.04.1991; Proceedings dated 27.05.1991 imposing the punishment of Warning in respect of the above charge sheet; Charge Sheet No. BLC:DAC:2006-E-37:CH-6/92 dated 07.02.1992; Proceedings dated 30.04.1992 imposing the punishment of Stoppage of increment for a period of six months without cumulative effect; Charge Sheet No. BLC:DAC:2055:E-37:CH-38/93 dated 22.04.1993; Proceedings dated 30.06.1993 imposing the punishment of Stoppage of increment for a period of six months with cumulative effect; Charge Sheet No. BLC:DAC:2008:E-37:CH-8/94 dated 17.11.1994; Proceedings dated 29.12.1994 imposing the punishment of 'CENSURE'; Charge Sheet No. BLC:DAC:3014:E-37:CH-12/97 dated 14.02.1997; Proceedings dated 19.03.1997 imposing the punishment of 'Stoppage of increment for a period of one year with cumulative effect'; Charge Sheet No. BLC:DAC:3017:E-37:CH-8/98 dated 17.04.1998; Proceedings dated 09.09.1998 imposing the punishment of 'Stoppage of four increments with cumulative effect'; Letter of I Party dated 16.08.1999 requesting for leave from 16.08.1999 to 08.09.1999; letter of I Party dated 10.09.1999 requesting for extension of leave till 30.09.1999; letter of I Party dated 28.10.1999 requesting for extension of leave till 16.10.1999; letter of I Party dated 20.10.1999 requesting for extension of leave till 13.11.1999; letter of I Party dated 16.11.1999 requesting for extension of leave till 04.12.1999; letter addressed to I Party dated 11.12.1999 requesting the I Party to join the duty within 3 days from the date of receipt of this letter; Undelivered cover sent to I Party bearing Ref. No. RL/2725/16.12.99/BLR; letter of I Party dated 25.12.1999 requesting for extension of leave till 22.01.2000; Circular No. 499/85 dated 18.12.85 on leave rules/norms for workmen and Proceedings dated 28.10.1999 showing that his absence from duty from 01.10.1999 to 16.10.1999 has been treated as Loss of Pay as MEX - 1 to MEX 23 and Telegram given by the CSE for extension of leave; Leave Sanction letter dated 23.09.1999; 30.09.1999; 01.03.2000 and 04.08.2000 as DEX - 1 to DEX - 5 for the CSE as CSE submitted that he has no witnesses to examine after receiving the written briefs of the management representative and Defence Representative submitted his report dated 17.10.2000 the charge being proved. Then the Disciplinary Authority while sending the copy of the enquiry report calling for explanation and affording an opportunity of hearing by his order dated 01.01.2001 imposed the punishment of compulsory retirement and on appeal by the CSE/I Party

the Appellate Authority after affording him an opportunity of hearing upheld the punishment imposed by the Disciplinary Authority by his order dated 23.04.2002. Then after lapse of about four years the CSE/I Party approached the ALC(C), Bangalore for conciliation and as the said conciliation failed it resulted in this reference.

7. As already adverted to by me above the Domestic Enquiry conducted against the I Party being held as fair and proper and I Party has led his evidence on the points of victimization and being not gainfully employed and arguments on merits have been heard the points that arise now for my consideration are :

Point No.1 : Whether the I Party is able to demonstrate the finding of the Enquiry Officer being baseless or perverse necessitating the interference by this tribunal?

Point No. 2 : If not, whether the punishment of compulsory retirement imposed by the Disciplinary Authority and upheld by the Appellate Authority is disproportionate to the misconduct proved against the I Party?

Point No. 3 : What Order/Award?

8. On appreciation of the pleadings, evidence brought on record in the Domestic Enquiry by both the sides, the report of the Enquiry Officer, the orders passed by the Disciplinary Authority and the Appellate Authority in the lights of the arguments addressed by the learned advocates appearing for both the sides my finding on Point No. 1 and 2 are in the negative and Point No. 3 as per final order for the following

REASONS

9. The learned advocate appearing for the I Party while referring to MEX-13, 14, 15, 16, 17, 18, 21 which are the letter and telegram of the I Party seeking leave and DEX-2, 3, 4 the orders sanctioning the leave urges that all the leave applications being sanctioned/regularised the charge of unauthorised absence is unsustainable as such the Enquiry Officer ought to have held the charge as not proved. With due respect to the learned advocate appearing for the I Party from the above documents referred to by him it is explicit that he did not apply for leave before hand and submitted them at a later date antedated, the first letter at MEX 13 was being received in the office of the II Party seeking leave from 16.08.1999 to 08.09.1999 only on 08.09.1999 which is date 16.08.1999 but no evidence is produced even having posted or forwarded this application on 16.08.1999. Similar is the case with regard to the other applications as well. Only because the II Party made sanction of leave on these applications as evidenced under exhibit DEX 2, 3 and 4 it does not take away his act of habitually remaining unauthorised absence without applying in advance and getting the leave sanctioned. Moreover the documentary evidence produced at exhibit MEX-1 to MEX - 12 do indicate as stated in the charge sheet being

punished on six occasions for his unauthorised absence. Since the six prior punishments imposed after issuing charge sheets being not at all challenged his claim that the said charge sheets were issued only to frame him for the purpose of termination of services is unacceptable. Since the evidence on record do indicate his absence for 285 days were being treated as on Loss of Pay and 1142 days as Absence without leave and on Loss of Pay and his last action of remaining absent continuously and unauthorisedly for a period of 30 days without any reasons being established the Enquiry Officer did not commit any error in holding that the charge is proved. Besides his remaining unauthorised absence for such a long period he sleeping over the matter for over a period of 4 years after the impugned order of compulsory retirement was passed in approaching the ALC(C) suggest that he had no mind to continue in the job. Though only delay in raising the dispute is not a ground to reject the reference on the ground of delay as no limitation is provided in the Act as urged by the learned advocate appearing for the I Party relying on the decision of the Apex Court reported in 2011 (1) LLJ 615 SC, addition to this delay his act of remaining unauthorised absence over a period of 1427 days as observed by me indicates that he had no mind to continue the job. Therefore, absolutely I find no reason to say the finding of the Enquiry Officer charge being proved as baseless or perverse. Accordingly, I arrived at conclusion of answering the Point No. 1 in the Negative.

10. As urged on behalf of the II Party relying on the decision of the Hon'ble Supreme Court in the case of M/s. L&T Komatsu Limited vs. Mr. Uday Kumar reported in 2008 LLR 113 leave not being a matter of right, habitual absenteeism amounts to gross violation of discipline punishment of dismissal being held justified in the instant case also having regard to the habitual absenteeism of the I Party is rightly taken into consideration by the Disciplinary Authority and having regard to his disability imposed with compulsory retirement instead of dismissal which also could have been passed for this misconduct, absolutely, I find no reason to say that the punishment imposed being disproportionate. Under the circumstances, having arrived at conclusion of answering this Point as well in the Negative, I pass the following.

ORDER

The reference is rejected holding that the action of the management of Canara Bank in imposition of punishment of compulsory retirement on Shri V Munirathnam, Ex-Clerk, Canara Bank, Bevoor Brach, Bangalore Rural District w.e.f. 01.01.2001 is legal and justified and that he is not entitle for any relief.

(Typed to my dictation by U D C, corrected and signed by me on 29th September 2014)

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2787.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड आर्थर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय चंडीगढ़ के पंचाट (संदर्भ संख्या 35/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/120/2009-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2787.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 35/2009) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No. L-42012/120/2009-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present : Sri Kewal Krishan, Presiding Officer

Case No.35/2009

Registered on 19.3.2010

Sh. Beshriya Ram
S/o Sh. Bangali Ram,
Village Jamthal, PO Harnora,
Bilaspur.

...Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla

...Respondents

APPEARANCES

For the workman : Sh. M.S. Gorsri for the workman
For the Management : Sh. V.P. Singh for respondent
No.1
Sh. H.R. Sharma for respondent
No.2
Respondent No.3 ex parte

AWARD

Passed on-- 21.8.2014

Vide Order No.L-42012/120/2009 (IR(DU)), dated 3.3.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s AKS Engineers & Contractors, in terminating the services of their workman Sh. Beshriya Ram w.e.f. 31/7/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.1 is the principal employer who is engaged for the construction of 'Kol Dam Hydro Electric Power Project' at Harmoda and has given contract to respondent No.2 who in turn engaged respondent No.3 as its sub-contractor. The workman was engaged by respondent No.3 on 7.8.2004 where he worked till 1.8.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.1 as well as by the Italian Thai Development Co. Ltd. who has been impleaded as respondent No.2, whereas M/s AKS Engineers and Contractors who is impleaded as respondent No.3 was proceeded against ex parte.

Respondent No.1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No.2 in its separate written statement pleaded that workman was engaged by respondent No.2 who retrenched his services on partial completion of work after paying him Rs.9315/- in lieu of notice period and retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.1 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma for respondent No.2.

It was argued by Mr. M.S. Gors, learned counsel for the workman that there is an un rebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No.2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2788.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड आर्थर्स के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय चंडीगढ़ के पंचाट (संदर्भ संख्या 26/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/26/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2788.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 26/2010) of the Central Government Industrial Tribunal Cum Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No. L-42012/26/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present: Sri Kewal Krishan, Presiding Officer.

Case No.26/2010

Registered on 25.5.2010

Sh. Palwinder Singh
S/o Sh. Sunder Lal,
C/o Sh. Rajesh Kumar Sharma
President District CITU District Committee Mandi, 221/
10, thanera Mohalla, Mandi.

...Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla

...Respondents

APPEARANCES

For the workman : Sh. M.S. Gorski for the workman
For the Management : Sh. V.P. Singh for respondent No.1

Sh. H.R. Sharma for respondent No.2

Respondent No. 3 ex parte

AWARD

Passed on-- 21.8.2014

Vide Order No.L-42012/26/2010 (IR(DU)), dated 12.5.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s AKS Engineers & Contractors, a sub contractor of M/s Italian Thai Development Public Co. Ltd. of NTPC, Kol dam in terminating the services of Sh. Palwinder Singh w.e.f. 14/8/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.1 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No.2 who in turn engaged respondent No.3 as its sub-contractor. The workman was engaged by respondent No.3 on 23.8.2004 where he worked till 14.8.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.1 as well as by the Italian Thai Development Co. Ltd. who has been impleaded as respondent No.2, whereas M/s AKS Engineers and Contractors who is impleaded as respondent No.3 was proceeded against ex parte.

Respondent No.1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No.2 in its separate written statement pleaded that workman was engaged by respondent No.2 who retrenched his services on partial completion of work after paying him Rs.9075/- in lieu of notice period and

retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.1 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma for respondent No.2.

It was argued by Mr. M.S. Gors, learned counsel for the workman that there is an un rebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No.2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2789.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड अदर्स के प्रबंधन के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 31/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/43/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2789.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 31/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No. L-42012/43/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer

Case No.31/2010

Registered on 25.5.2010

Sh. Vijay Kumar
S/o Sh. Mela Ram,
C/o Sh. Rajesh Kumar Sharma
President District CITU District Committee Mandi,
221/10, Thanera Mohalla, Mandi.

Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla

Respondents

APPEARANCES

For the workman : Sh. M.S. Gorski for the workman

For the Management : Sh. V.P. Singh for respondent No. 1

Sh. H.R. Sharma for respondent No. 2

Respondent No.3 ex parte

AWARD

Passed on : 21.8.2014

Vide Order No.L-42012/43/2010 (IR(DU)), dated 12.5.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. AKS Engineers & Contractors, a sub contractor of M/s. Italian Thai Development Public Co. Ltd. of NTPC, Kol dam in terminating the services of Sh. Vijay Kumar w.e.f. 14/8/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.1 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No.2 who in turn engaged respondent No.3 as its sub-contractor. The workman was engaged by respondent No.3 on 7.8.2004 where he worked till 3.9.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.1 as well as by the Italian Thai Development Co. Ltd. who has been impleaded as respondent No.2, whereas M/s. AKS Engineers and Contractors who is impleaded as respondent No.3 was proceeded against ex parte.

Respondent No.1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No.2 in its separate written statement pleaded that workman was engaged by respondent No.2 who retrenched his services on partial completion of work after paying him Rs.11,340/- in lieu of notice period and

retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.1 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gorski, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma for respondent No.2.

It was argued by Mr. M.S. Gorski, learned counsel for the workman that there is an unrebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No.2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2790.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड अदर्स के प्रबंधन के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय चंडीगढ़ के पंचाट (संदर्भ संख्या 24/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/33/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2790.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 24/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No. L-42012/33/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

Case No. 24/2010

Registered on 25.5.2010

Sh. Chaman Lal,
S/o Sh. Niranjan,
Village Chhatwar,
PO Maloh, Tehsil Sundernagar,
Mandi.

...Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla

...Respondents

APPEARANCES

For the workman : Sh. M.S. Gorski for the workman
For the Management : Sh. V.P. Singh for respondent No. 1

Sh. H.R. Sharma for respondent No.2

Respondent No.3 ex parte

AWARD

Passed on-- 21.8.2014

Vide Order No.L-42012/33/2010 (IR(DU)), dated 12.5.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. AKS Engineers & Contractors, a sub contractor of M/s. Italian Thai Development Public Co. Ltd. of NTPC, Kol Dam in terminating the services of Sh. Chaman Lal w.e.f. 13/8/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.1 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No.2 who in turn engaged respondent No.3 as its sub-contractor. The workman was engaged by respondent No.3 on 9.8.2004 where he worked till 14.8.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.1 as well as by the Italian Thai Development Co. Ltd. who has been impleaded as respondent No.2; whereas M/s. AKS Engineers and Contractors who is impleaded as respondent No.3 was proceeded against ex parte.

Respondent No.1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No.2 in its separate written statement pleaded that workman was engaged by respondent No.3 who retrenched his services on partial completion of work after paying him Rs.9075/- in lieu of notice period and

retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.1 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma for respondent No.2.

It was argued by Mr. M.S. Gors, learned counsel for the workman that there is an un rebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No.2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2791.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड अदर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय चंडीगढ़ के पंचाट (संदर्भ संख्या 30/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/23/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2791.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 30/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No. L-42012/23/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

Case No. 30/2010

Registered on 25.5.2010

Sh. Tej Prakash S/o Late Sh. Dila Ram, C/o Sh. Rajesh Kumar Sharma President District CITU District Committee Mandi, 221/10, Thanera Mohalla, Mandi.

...Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla

....Respondents

APPEARANCES:

For the Workman : Sh. M.S. Gorsl for the workman

For the Management : Sh. V.P. Singh for Respondent
No.1

Sh. H.R. Sharma for Respondent
No. 2

Respondent No.3 ex parte

AWARD

Passed on : 21.8.2014

Vide Order No. L-42012/23/2010-IR(DU)), dated 12.5.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. AKS Engineers & Contractors, a sub contractor of M/s. Italian Thai Development Public Co. Ltd. of NTPC, Kol dam in terminating the services of Sh. Tej Prakash w.e.f. 14/8/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.1 is the principal employer who is engaged for the construction of 'Kol Dam Hydro Electric Power Project' at Harmoda and has given contract to respondent No.2 who in turn engaged respondent No.3 as its sub-contractor. The workman was engaged by respondent No.3 on 23.8.2004 where he worked till 14.8.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.1 as well as by the Italian Thai Development Co. Ltd. who has been impleaded as respondent No.2, whereas M/s. AKS Engineers and Contractors who is impleaded as respondent No.3 was proceeded against ex parte.

Respondent No.1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No.2 in its separate written statement pleaded that workman was engaged by respondent No.2 who retrenched his services on partial completion of work after paying him Rs.9075/- in lieu of notice period and

retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.1 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gorsri, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma for respondent No.2.

It was argued by Mr. M.S. Gors, learned counsel for the workman that there is an un rebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No.2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2792.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड अदर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 33/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/114/2009-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2792.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. Case No. 33/2009) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No. L-42012/114/2009-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer

Case No. 33/2009

Registered on 19.3.2010

Sh. Balak Ram S/o Sh. Barlaju Ram, Village Deola-Chhamb,
PO Harnora, Tehsil & Distt. Bilaspur (HP).

....Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla

....Respondents

APPEARANCES:

For the workman : Sh. M.S. Gorski for the workman

For the Management : Sh. V.P. Singh for respondent No. 1

Sh. H.R. Sharma for respondent No. 2

Respondent No.3 ex parte

AWARD

Passed on 21.8.2014

Vide Order No.L-42012/114/2009-IR(DU), dated 3.3.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal :

“Whether the action of the management of M/s. AKS Engineers & Contractors, in terminating the services of their workman Sh. Balak Ram w.e.f. 31/7/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.1 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No.2 who in turn engaged respondent No.3 as its sub-contractor. The workman was engaged by respondent No.3 on 7.8.2004 where he worked till 31.7.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.1 as well as by the Italian Thai Development Co. Ltd. who has been impleaded as respondent No.2, whereas M/s. AKS Engineers and Contractors who is impleaded as respondent No.3 was proceeded against ex parte.

Respondent No.1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No.2 in its separate written statement pleaded that workman was engaged by respondent No.2 who retrenched his services on partial completion of work after paying him Rs.9315/- in lieu of notice period and retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.1 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma for respondent No. 2.

It was argued by Mr. M.S. Gors, learned counsel for the workman that there is an un rebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No. 2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2793.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड आर्थर्स के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 22/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/32/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2793.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. Case No. 22/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No.L-42012/32/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer

Case No. 22/2010

Registered on 25.5.2010

Sh. Hem Raj, S/o Sh. Kala Ram, VPO Harnora, Tehsil Sadar, Bilaspur.

....Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla

....Respondents

APPEARANCES :

For the workman : Sh. M.S. Gors for the workman

For the Management : Sh. V.P. Singh for respondent
No. 1

Sh. H.R. Sharma for respondent
No. 2

Respondent No.3 ex parte

AWARD

Passed on 21.8.2014

Vide Order No.L-42012/32/2010-IR(DU), dated 12.5.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal :

“Whether the action of the management of M/s. AKS Engineers & Contractors, a sub contractor of M/s Italian Thai Development Public Co. Ltd. of NTPC, Kol dam in terminating the services of Sh. Hem Raj w.e.f. 13/8/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.1 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No. 2 who in turn engaged respondent No.3 as its sub-contractor. The workman was engaged by respondent No.3 on 27.7.2004 where he worked till 14.8.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.1 as well as by the Italian Thai Development Co. Ltd. who has been impleaded as respondent No. 2, whereas M/s AKS Engineers and Contractors who is impleaded as respondent No. 3 was proceeded against ex parte.

Respondent No. 1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No. 2 in its separate written statement pleaded that workman was engaged by respondent No. 3 who retrenched his services on partial completion of work after paying him Rs.10,050/- in lieu of notice period and retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.1 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma for respondent No. 2.

It was argued by Mr. M.S. Gors, learned counsel for the workman that there is an un rebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No. 2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2794.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड अदर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 20/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/38/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2794.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. Case No. 20/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No. L-42012/38/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer

Case No. 20/2010

Registered on 25.5.2010

Sh. Mehar Singh, S/o Sh. Munshi Ram, Village Saroni, PO Jarol, Tehsil Sundernagar, Mandi (HP).

...Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla

...Respondents

APPEARANCES:

For the Workman : Sh. M.S. Gorski for the workman

For the Management : Sh. V.P. Singh for respondent No. 1

Sh. H.R. Sharma for respondent No. 2

Respondent No. 3 ex parte

AWARD

Passed on-- 21.8.2014

Vide Order No.L-42012/38/2010-IR(DU), dated 12.5.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. AKS Engineers & Contractors, a sub contractor of M/s. Italian Thai Development Public Co. Ltd. of NTPC, Kol Dam in terminating the services of Sh. Mehar Singh w.e.f. 31/7/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.1 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No. 2 who in turn engaged respondent No. 3 as its sub-contractor. The workman was engaged by respondent No. 3 on 26.8.2004 where he worked till 1.8.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.1 as well as by the Italian Thai Development Co. Ltd. who has been impleaded as respondent No. 2; whereas M/s. AKS Engineers and Contractors who is impleaded as respondent No. 3 was proceeded against ex parte.

Respondent No.1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No.2 in its separate written statement pleaded that workman was engaged by respondent No. 3 who retrenched his services on partial completion of work after paying him Rs.11,340/- in lieu of notice period and retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No. 1 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma for respondent No. 2.

It was argued by Mr. M.S. Gors, Learned Counsel for the workman that there is an unrebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No. 2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2795.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड अदर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 18/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/20/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2795.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. Case No. 18/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No. L-42012/20/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer

Case No. 18/2010

Registered on 25.5.2010

Sh. Das Ram, S/o Sh. Tulsi Ram, C/o Sh. Rajesh Kumar Sharma, President District CITU, District Committee Mandi, 221/10, Thanera Mohalla, Mandi (HP).

...Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla

...Respondents

APPEARANCES:

For the Workman : Sh. M.S. Gorsri for the workman
For the Management : Sh. V.P. Singh for respondent
No. 1
Sh. H.R. Sharma for respondent
No. 2
Respondent No.3 ex parte

AWARD

Passed on-- 21.8.2014

Vide Order No. L-42012/20/2010-IR(DU), dated 12.5.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. AKS Engineers and Contractors, a sub contractor of M/s. Italian Thai Development Public Co. Ltd. of NTPC, Kol Dam in terminating the services of Sh. Das Ram w.e.f. 14/8/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.1 is the principal employer who is engaged for the construction of 'Kol Dam Hydro Electric Power Project' at Harmoda and has given contract to respondent No. 2 who in turn engaged respondent No. 3 as its sub-contractor. The workman was engaged by respondent No. 3 on 12.8.2004 where he worked till 14.8.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No. 2 as well as by the Italian Thai Development Co. Ltd. who have been impleaded as respondent No. 2; whereas M/s. AKS Engineers and Contractors who is impleaded as respondent No. 3 was proceeded against ex parte.

Respondent No.1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No. 2 in its separate written statement pleaded that workman was engaged by respondent No. 3 who retrenched his services on partial completion of work after paying him Rs.11,340/- in lieu of notice period and retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent Nos. 1 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma for respondent No. 2.

It was argued by Mr. M.S. Gorski, Learned Counsel for the workman that there is an un rebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No. 2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2796.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड आर्थर्स के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 75/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/111/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2796.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. Case No. 75/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC and Others and their workmen, which was received by the Central Government on 17/10/2014.

[No. L-42012/111/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer

Case No. 75/2010

Registered on 26.10.2010

Sh. Sh. Naresh Kumar, S/o Sh. Neel Kanth, Village and PO Doghari, Tehsil Sundernagar, Mandi (HP)

...Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla

...Respondents

APPEARANCES:

For the Workman : Sh. M.S. Gorski for the workman
For the Management : Sh. V.P. Singh for respondent No. 1

Sh. H.R. Sharma for respondent No. 2

Respondent No. 3 ex parte

AWARD

Passed on-- 21.8.2014

Vide Order No. L-42012/111/2010-IR(DU), dated 29.9.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. AKS Engineers and Contractors, a contractor engaged by NTPC, Kol Dam Hydroelectric Power Project, Bilaspur in terminating the services of their workman Sh. Naresh Kumar S/o Sh. Neel Kanth w.e.f. 1/8/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.1 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No. 2 who in turn engaged respondent No. 3 as its sub-contractor. The workman was engaged by respondent No. 3 on 29.7.2004 where he worked till 31.7.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.1 as well as by the Italian Thai Development Co. Ltd. who has been impleaded as respondent No. 2, whereas M/s. AKS Engineers and Contractors who were impleaded as respondent No. 3 was proceeded against ex parte.

Respondent No.1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No. 2 in its separate written statement pleaded that workman was engaged by respondent No. 3 who retrenched his services on partial completion of work after paying him Rs. 9075/- in lieu of notice period and retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.1 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma for respondent No.2.

It was argued by Mr. M.S. Gors, learned counsel for the workman that there is an un rebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No.2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2797.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड आर्थर्स के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय चंडीगढ़ के पंचाट (संदर्भ संख्या 15/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/37/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2797.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. Case No. 15/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No. L-42012/37/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer

Case No. 15/2010

Registered on 25.5.2010

Sh. Ravinder Kumar, S/o Sh. Nand Lal, VPO Harnora, Tehsil Sadar, Bilaspur

....Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla

....Respondents

APPEARANCES:

For the workman : Sh. M.S. Gorski for the workman
For the Management : Sh. V.P. Singh for respondent
No. 1

Sh. H.R. Sharma for respondent
No. 2

Respondent No.3 ex parte

AWARD

Passed on-- 21.8.2014

Vide Order No.L-42012/37/2010-IR(DU), dated 12.5.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. AKS Engineers & Contractors, a sub contractor of M/s. Italian Thai Development Public Co. Ltd. of NTPC, Kol dam in terminating the services of Sh. Ravinder Kumar w.e.f. 31/7/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.1 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No.2 who in turn engaged respondent No.3 as its sub-contractor. The workman was engaged by respondent No.3 on 24.8.2004 where he worked till 1.8.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.1 as well as by the Italian Thai Development Co. Ltd. who has been impleaded as respondent No.3; whereas M/s. AKS Engineers and Contractors who is impleaded as respondent No.2 was proceeded against ex parte.

Respondent No.1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No.2 in its separate written statement pleaded that workman was engaged by respondent No.3 who retrenched his services on partial completion of work after paying him Rs.9075/- in lieu of notice period and

retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.1 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gorski, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma for respondent No.2.

It was argued by Mr. M.S. Gorski, learned counsel for the workman that there is an un rebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No.2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2798.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड आर्थर्स के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय चंडीगढ़ के पंचाट (संदर्भ संख्या 12/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/30/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2798.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. Case No. 12/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No. L-42012/30/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer

Case No. 12/2010

Registered on 25.5.2010

Sh. Roop Singh, S/o Sh. Keshav Ram, C/o Sh. Rajesh Kumar Sharma, President District CITU, District Committee Mandi, 221/10, Thanera Mohalla, Mandi (HP).

.....Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla

....Respondents

APPEARANCES:

For the workman : Sh. M.S. Gorski for the workman
For the Management : Sh. V.P. Singh for respondent No. 1
Sh. H.R. Sharma for respondent No. 2
Respondent No.3 ex parte

AWARD

Passed on-- 21.8.2014

Vide Order No.L-42012/30/2010 (IR(DU)), dated 12.5.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. AKS Engineers & Contractors, a sub contractor of M/s. Italian Thai Development Public Co. Ltd. of NTPC, Kol dam in terminating the services of Sh. Roop Singh S/o Sh. Keshav Ram w.e.f. 14/8/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.1 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No.2 who in turn engaged respondent No.3 as its sub-contractor. The workman was engaged by respondent No.3 on 3.9.2005 where he worked till 14.8.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.1 as well as by the Italian Thai Development Co. Ltd. who has been impleaded as respondent No.2 whereas M/s. AKS Engineers and Contractors who is impleaded as respondent No.3 was proceeded against ex parte.

Respondent No.1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No.2 in its separate written statement pleaded that workman was engaged by respondent No.3 who retrenched his services on partial completion of work after paying him Rs.7563/- in lieu of notice period and

retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.1 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma for respondent No.2.

It was argued by Mr. M.S. Gors, learned counsel for the workman that there is an un rebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No.2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2799.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड आर्थर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय चंडीगढ़ के पंचाट (संदर्भ संख्या 139/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/206/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2799.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. Case No. 139/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No.L-42012/206/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer

Case No. 139/2011

Registered on 28.4.2011

Sh. Roop Singh, S/o Sh. Jodhal Ram, Dewla Chhamb, PO Harnora, Tehsil Sundernagar, Bilaspur.

.....Applicant

Versus

1. M/s. UR Infrastructure Company Private Limited, Village Chamb, Post Office Harnora, Bilaspur
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi
3. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur

.....Respondents

APPEARANCES

For the workman : Sh. M.S. Gors for the workman

For the Management : Sh. V.P. Singh for respondent No. 3

Sh. H.R. Sharma for respondent
No. 2

Respondent No.1 ex parte

AWARD

Passed on-- 21.8.2014

Vide Order No.L-42012/206/2010-IR(DU), dated 1.4.2011 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. UR Infrastructure Co. Pvt. Ltd. sub contractor of M/s. Italian Thai Development Public Ltd., a contractor of M/s. NTPC Ltd. in retrenchment of the services of Sh. Roop Singh S/o Sh. Joghal Ram w.e.f. 1/8/2008 without following the principle of Last come first go is legal and justified? What relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.3 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No.2 who in turn engaged respondent No.1 as its sub-contractor. The workman was engaged by respondent No.1 on 23.11.2004 where he worked till 1.8.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.3 as well as by the Italian Thai Development Co. Ltd. who have been impleaded as respondent No.2; whereas M/s. U.R. Infrastructures Company Private Ltd., who is impleaded as respondent No.1 was proceeded against ex-parte.

Respondent No.2 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No.2 in its separate written statement pleaded that workman was engaged by respondent No.1 who retrenched his services on partial completion of work after paying him Rs.9075/- in lieu of notice period and retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand, Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.3 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.3 and Sh. H.R. Sharma for respondent No.2.

It was argued by Mr. M.S. Gors, learned counsel for the workman that there is an unrebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No.2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2800.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड अदर्स के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 29/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/25/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2800.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. Case No. 29/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No.L-42012/25/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present : Sri Kewal Krishan, Presiding Officer.

Case No. 29/2010

Registered on 25.5.2010

Sh. Roop Singh, S/o Sh. Jagdish Chand, C/o Sh. Rajesh Kumar Sharma, President District CITU, District Committee Mandi, 221/10, Thanera Mohalla, Mandi.

.....Applicant

Versus

1. M/s. NTPC Ltd., Kol Dam Hydro Electric Power Project, Barmana, Tehsil Sadar, District Bilaspur, Himachal Pradesh, through its Project Manager.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.

3. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla

.....Respondents

APPEARANCES

For the workman : Sh. M.S. Gorski for the workman

For the Management : Sh. V.P. Singh for respondent No. 1

Sh. H.R. Sharma for respondent No. 2

Respondent No.3 ex-parte

AWARD

Passed on-- 21.8.2014

Vide Order No.L-42012/25/2010-IR(DU), dated 12.5.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the aforesaid industrial disputes for adjudication to this Tribunal.

“Whether the action of the management of M/s. AKS Engineers and Contractors a sub contractor of M/s. Italian Thai Development Public Co. Ltd. of NTPC, Koldam in terminating the services of Sh. Roop Singh w.e.f. 14/8/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman appeared and submitted statement of claim pleading that respondent No.1 is the principal employer who is engaged for the construction of ‘Kol Dam, Hydro Electric Power Project’ at Harmoda; respondent No.2 is its main contractor who in turn engaged respondent No.3 as sub-contractor.

That workman was appointed through respondent No.3 on 27.4.2005 in driver category and he worked continuously till 13.8.2008 and his services were retrenched.

He challenged the retrenchment on the ground that the persons junior to him were retained in service as well as large number of worker were appointed after his retrenchment, and as such, there is violation of Section 25G and 25H of the Act. It is further pleaded that there are about 700 workers and the employer has not taken permission from the Government for effecting retrenchment. The same is liable to be set aside.

It is pleaded that workman may be deemed to be in service and be given all the benefits.

The claim was contested by the NTPC i.e. respondent No.1 as well as by the Italian Thai Development Co. Ltd. who have been impleaded as respondent No.2; whereas M/s. AKS Engineers and Contractors who is impleaded as respondent No.3 was proceeded against ex parte.

Respondent No.1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No.2 in its separate written statement pleaded that workman was engaged by respondent No.2 who retrenched his services on partial completion of work after paying him Rs.9450/- in lieu of notice period and retrenchment compensation. That is work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

The workman did not lead any evidence and his evidence was closed by order vide order dated 29.8.2011.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma appeared on behalf of respondent No.1 and 2 and filed affidavits reiterating the stand as taken up in their respective written statements.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma, Manager for respondent No.2.

The only contention raised by the learned counsel for the workman is that respondent No.3 retrenched the services of the workman after retaining the persons junior to him as well the management employed several more workers on the project after the retrenchment and as such the retrenchment of the workman is illegal.

It may be added that workman has pleaded the above said facts in his statement of claim but no evidence has been led whatsoever on the file to establish that the persons junior to the workman were retained by respondent No.3 at the time of retrenchment; or some other persons were also employed on the project after the termination of the services of the workman. There is no dispute that the workman was paid retrenchment compensation as required under Section 25F of the Act. Being so, the retrenchment cannot be termed as illegal and void.

In result, it is held that the action of respondent No.3 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2801.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड अदर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय चंडीगढ़ के पंचाट (संदर्भ संख्या 126/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/215/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2801.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D Case No. 126/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No.L-42012/215/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

Case No. 126/2011

Registered on 28.4.2011

Sh. Kuldeep Chand, S/o Sh. Roop Lal, Village Mohra, PO Kapahra, Bilaspur.

.....Applicant

Versus

1. M/s. UR Infrastructure Company Private Limited, Village Chamb, Post Office Harnora, Bilaspur
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur

.....Respondents

APPEARANCES

For the Workman : Sh. M.S. Gors for the workman

For the Management : Sh. V.P. Singh for respondent No. 3

Sh. H.R. Sharma for respondent No. 2

Respondent No.1 ex parte

AWARD

Passed on-- 21.8.2014

Vide Order No.L-42012/215/2010-IR(DU), dated 9.3.2011 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. UR Infrastructure Co. Pvt. Ltd. sub contractor of M/s. Italian Thai Development Public Ltd., a contractor of M/s. NTPC Ltd. in retrenchment of the services of Sh. Kuldeep Chand S/o Roop Lal w.e.f. 3/9/2008 without following the principle of Last come first go is legal and justified? What relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.3 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No.2 who in turn engaged respondent No.1 as its sub-contractor. The workman was engaged by respondent No.1 on 3.1.2005 where he worked till 3.9.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.3 as well as by the Italian Thai Development Co. Ltd. who have been impleaded as respondent No.2; whereas M/s. U.R. Infrastructures Company Private Ltd., who is impleaded as respondent No.1 was proceeded against ex parte.

Respondent No.3 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No.2 in its separate written statement pleaded that workman was engaged by respondent No.1 who retrenched his services on partial completion of work after paying him Rs.11,340/- in lieu of notice period and

retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.3 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gorski, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.3 and Sh. H.R. Sharma for respondent No.2.

It was argued by Mr. M.S. Gorski, learned counsel for the workman that there is an un rebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No.2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2802.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड अदर्स के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 134/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/201/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2802.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. Case No. 134/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No.L-42012/201/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

Case No. 134/2011

Registered on 28.4.2011

Sh. Kuldeep Kumar S/o Sh. Madu Ram, Village Deola Chamb, PO Harnora, Tehsil Sadar, Bilaspur

.....Applicant

Versus

1. M/s. UR Infrastructure Company Private Limited, Village Chamb, Post Office Harnora, Bilaspur
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur

.....Respondents

APPEARANCES:

For the Workman : Sh. M.S. Gorski for the workman

For the Management : Sh. V.P. Singh for respondent No. 3

Sh. H.R. Sharma for respondent No. 2

Respondent No.1 ex parte

AWARD

Passed on-- 21.8.2014

Vide Order No.L-42012/201/2010-IR(DU), dated 1.4.2011 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. UR Infrastructure Co. Pvt. Ltd. sub contractor of M/s. Italian Thai Development Public Ltd., a contractor of M/s. NTPC Ltd. in retrenchment of the services of Sh. Kuldeep Kumar S/o Sh. Madu Ram w.e.f. 1/8/2008 without following the principle of last come first go is legal and justified? What relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.3 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No.2 who in turn engaged respondent No.1 as its sub-contractor. The workman was engaged by respondent No.1 on 24.11.2004 where he worked till 1.8.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.3 as well as by the Italian Thai Development Co. Ltd. who have been impleaded as respondent No.2; whereas M/s. U.R. Infrastructures Company Private Ltd., who is impleaded as respondent No.1 was proceeded against ex parte.

Respondent No.2 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No.2 in its separate written statement pleaded that workman was engaged by respondent No.1 who retrenched his services on partial completion of work after paying him Rs.9075/- in lieu of notice period and

retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.3 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.3 and Sh. H.R. Sharma for respondent No.2.

It was argued by Mr. M.S. Gors, learned counsel for the workman that there is an un rebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No.2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2803.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड अदर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 29/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/117/2009-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2803.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. Case No. 29/2009) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No. L-42012/117/2009-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

Case No. 29/2009

Registered on 19.3.2010

Sh. Parminder Singh S/o Sh. Punjab Singh, VPO Karsol, Tehsil Jogindernagar, Mandi (HP)

.....Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla

.....Respondents

APPEARANCES:

For the Workman : Sh. M.S. Gors for the workman

For the Management : Sh. V.P. Singh for respondent No.1

Sh. H.R. Sharma for respondent No. 2

Respondent No. 3 ex parte

AWARD

Passed on : 21.8.2014

Vide Order No.L-42012/117/2009-IR(DU), dated 3.3.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. AKS Engineers & Contractors, terminating the services of their workman Sh. Parminder Singh w.e.f. 29/8/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No. 1 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No. 2 who in turn engaged respondent No. 3 as its sub-contractor. The workman was engaged by respondent No. 3 on 5.8.2004 where he worked till 8.9.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No. 1 as well as by the Italian Thai Development Co. Ltd. who has been impleaded as respondent No. 2, whereas M/s. AKS Engineers and Contractors who is impleaded as respondent No. 3 was proceeded against ex parte.

Respondent No.1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No. 2 in its separate written statement pleaded that workman was engaged by respondent No. 2 who retrenched his services on partial completion of work after paying him Rs.11,340/- in lieu of notice period and retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.1 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma for respondent No. 2.

It was argued by Mr. M.S. Gors, learned counsel for the workman that there is an un rebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No. 2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2804.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड अदर्स के प्रबंधन के संबंध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय चंडीगढ़ के पंचाट (संदर्भ संख्या 28/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/24/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2804.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. Case No. 28/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No. L-42012/24/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

Case No. 28/2010

Registered on 25.5.2010

Sh. Rajesh Kumar S/o Sh. Nikka Ram, C/o Sh. Rajesh Kumar Sharma President District CITU District Committee Mandi, 221/10, thanera Mohalla, Mandi.

.....Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil Sundernagar, Mandi.
3. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla

.....Respondents

APPEARANCES:

For the workman : Sh. M.S. Gorski for the workman
For the Management : Sh. V.P. Singh for respondent No. 1
Sh. H.R. Sharma for respondent No. 2
Respondent No. 3 ex parte

AWARD

Passed on 21.8.2014

Vide Order No. L-42012/24/2010-IR(DU), dated 12.5.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. AKS Engineers & Contractors, a sub contractor of M/s. Italian Thai Development Public Co. Ltd. of NTPC, Kol Dam in terminating the services of Sh. Rajesh Kumar w.e.f. 14/8/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.1 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No. 2 who in turn engaged respondent No. 3 as its sub-contractor. The workman was engaged by respondent No. 3 on 1.4.2004 where he worked till 14.8.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.1 as well as by the Italian Thai Development Co. Ltd. who has been impleaded as respondent No. 2, whereas M/s. AKS Engineers and Contractors who is impleaded as respondent No. 3 was proceeded against ex parte.

Respondent No.1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No. 2 in its separate written statement pleaded that workman was engaged by respondent No. 2 who retrenched his services on partial completion of work after paying him Rs.7563/- in lieu of notice period and retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.1 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma for respondent No.2.

It was argued by Mr. M.S. Gors, learned counsel for the workman that there is an un rebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No.2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2805.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड अदर्स के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 85/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/120/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2805.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. Case No. 85/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No.L-42012/120/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

Case No. 85/2010

Registered on 26.10.2010

Sh. Mani Ram, S/o Sh. Rattan Singh, Village Ropari, PO Kapahi, Tehsil Sundernagar, Mandi.

.....Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla

...Respondents

APPEARANCES:

For the Workman : Sh. M.S. Gors for the workman

For the Management : Sh. V.P. Singh for respondent
No. 1

Sh. H.R. Sharma for respondent
No. 2

Respondent No.3 ex parte

AWARD

Passed on 21.8.2014

Vide Order No.L-42012/120/2010-IR(DU), dated 29.9.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. AKS Engineers & Contractors, a contractor engaged by NTPC Koldam Hydroelectric Power Project, Bilaspur in terminating the services of their workman Sh. Mani Ram S/o Sh. Rattan Singh w.e.f. 1/8/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.1 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No.2 who in turn engaged respondent No.3 as its sub-contractor. The workman was engaged by respondent No.3 on 19.8.2004 where he worked till 31.7.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.2 as well as by the Italian Thai Development Co. Ltd. who have been impleaded as respondent No.2; whereas M/s. AKS Engineers and Contractors who is impleaded as respondent No.3 was proceeded against ex parte.

Respondent No.1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No.2 in its separate written statement pleaded that workman was engaged by respondent No.3 who retrenched his services on partial completion of work after paying him Rs.11,340/- in lieu of notice period and

retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.1 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma for respondent No.2.

It was argued by Mr. M.S. Gors, learned counsel for the workman that there is an unrebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No.2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2806.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड अदर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 124/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/212/2009-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2806.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. Case No. 124/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No. L-42012/212/2009-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

Case No. 124/2011

Registered on 28.4.2011

Sh. Ganga Ram S/o Sh. Nank Chand, Village Jukhari, PO Galot, Tehsil Nalagarh, Solan (HP).

.....Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. M/s UR Infrastructure Company Private Limited, Village Chamb, Post Office Harnora, Bilaspur

.....Respondents

APPEARANCES

For the workman : Sh. M.S. Gorski for the workman

For the Management : Sh. V.P. Singh for respondent No. 1

Sh. H.R. Sharma for respondent No. 2

Respondent No.3 ex parte

AWARD

Passed on 21.8.2014

Vide Order No.L-42012/212/2010-IR(DU), dated 1.4.2011 the Central Government in exercise of the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the aforesaid industrial disputes for adjudication to this Tribunal.

“Whether the action of the management of M/s. UR Infrastructure Co. Pvt. Ltd. sub contractor of M/s. Italian Thai Development Public Ltd., a contractor of M/s. NTPC Ltd. in retrenchment of the services of Sh. Ganga Ram S/o Nanak Chand w.e.f. 3/9/2003 without following the principle of Last come first go is legal and justified? What relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.1 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No.2 who in turn engaged respondent No.3 as its sub-contractor. The workman was engaged by respondent No.3 on 3.1.2005 where he worked till 3.9.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.1 as well as by the Italian Thai Development Co. Ltd. who have been impleaded as respondent No.2; whereas M/s. U.R. Infrastructures Company Private Ltd., who is impleaded as respondent No.3 was proceeded against ex parte.

Respondent No.1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No.2 in its separate written statement pleaded that workman was engaged by respondent No.3 who retrenched his services on partial completion of work after paying him Rs.9075/- in lieu of notice period and

retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.1 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma for respondent No.2.

It was argued by Mr. M.S. Gors, learned counsel for the workman that there is an un rebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No.2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2807.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड अदर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 16/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/42/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2807.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. Case No. 16/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No.L-42012/42/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

Case No. 16/2010

Registered on 25.5.2010

Sh. Rattan Lal, S/o Sh. Sadhu Ram, C/o Sh. Rajesh Kumar Sharma President District CITU District Committee Mandi, 221/10, thanera Mohalla, Mandi.

.....Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla

....Respondents

APPEARANCES:

For the workman : Sh. M.S. Gorski for the workman

For the Management : Sh. V.P. Singh for respondent No. 1

Sh. H.R. Sharma for respondent No. 2

Respondent No.3 ex parte

AWARD

Passed on 21.8.2014

Vide Order No.L-42012/42/2010-IR(DU), dated 12.5.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s AKS Engineers & Contractors, a sub-contractor of M/s Italian Thai Development Public Co. Ltd. of NTPC, Kol dam in terminating the services of Sh. Rattan Lal w.e.f. 14/8/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.1 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No.2 who in turn engaged respondent No.3 as its sub-contractor. The workman was engaged by respondent No.3 on 21.8.2004 where he worked till 14.8.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.1 as well as by the Italian Thai Development Co. Ltd. who has been impleaded as respondent No.2, whereas M/s AKS Engineers and Contractors who is impleaded as respondent No.3 was proceeded against ex parte.

Respondent No.1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No.2 in its separate written statement pleaded that workman was engaged by respondent No.2 who retrenched his services on partial completion of work after paying him Rs.11,340/- in lieu of notice period and

retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.1 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gorski, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma for respondent No.2.

It was argued by Mr. M.S. Gorski, learned counsel for the workman that there is an un rebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No.2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2808.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड अदर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 13/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/29/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2808.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 13/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No. L-42012/29/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

Case No. 13/2010

Registered on 25.5.2010

Sh. Rajesh Kumar, S/o Muni Lal, C/o Sh. Rajesh Kumar Sharma, President District CITU, District Committee Mandi, 221/10, Thanera Mohalla, Mandi.

...Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi
3. The Managing Dir., M/s AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla

...Respondents

APPEARANCES:

For the Workman : Sh. M.S. Gorski for the workman

For the Management : Sh. V.P. Singh for respondent No. 1

Sh. H.R. Sharma for respondent No. 2

Respondent No.3 ex parte

AWARD

Passed on : 21-8-2014

Vide Order No.L-42012/29/2010-IR(DU), dated 12.5.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s AKS Engineers & Contractors, a sub-contractor of M/s Italian Thai Development Public Co. Ltd. of NTPC, Koldam in terminating the services of Sh. Rajesh Kumar w.e.f. 14/8/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.1 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No.2 who in turn engaged respondent No.3 as its sub-contractor. The workman was engaged by respondent No.3 on 26.8.2004 where he worked till 14.8.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.1 as well as by the Italian Thai Development Co. Ltd. who has been impleaded as respondent No.2, whereas M/s AKS Engineers and Contractors who is impleaded as respondent No.2 was proceeded against ex parte.

Respondent No.1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No.2 in its separate written statement pleaded that workman was engaged by respondent No.3 who retrenched his services on partial completion of work after paying him Rs.9075/- in lieu of notice period and retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.1 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma for respondent No.2.

It was argued by Mr. M.S. Gors, learned counsel for the workman that there is an un rebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No.2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2809.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड अदर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय चंडीगढ़ के पंचाट (संदर्भ संख्या 17/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/21/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2809.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 17/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No. L-42012/21/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

Case No.17/2010

Registered on 25.5.2010

Sh. Ved Prakash, S/o Sh. Kamlesh, C/o Sh. Rajesh Kumar Sharma President District CITU District Committee Mandi, 221/10, thanera Mohalla, Mandi.

Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla

Respondents

APPEARANCES

For the Workman : Sh. M.S. Gors for the workman

For the Management : Sh. V.P. Singh for respondent No. 1

Sh. H.R. Sharma for respondent No. 2

Respondent No.3 ex parte

AWARD

Passed on 21.8.2014

Vide Order No.L-42012/21/2010-IR(DU), dated 12.5.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s AKS Engineers & Contractors, a sub-contractor of M/s Italian Thai Development Public Co. Ltd. of NTPC, Kol Dam in terminating the services of Sh. Ved Prakash w.e.f. 14/8/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.1 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No.2 who in turn engaged respondent No.3 as its sub-contractor. The workman was engaged by respondent No.3 on 9.6.2005 where he worked till 14.8.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.1 as well as by the Italian Thai Development Co. Ltd. who has been impleaded as respondent No.2, whereas M/s AKS Engineers and Contractors who is impleaded as respondent No.3 was proceeded against ex parte.

Respondent No.1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No.2 in its separate written statement pleaded that workman was engaged by respondent No.2 who retrenched his services on partial completion of work after paying him Rs.8375/- in lieu of notice period and

retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.1 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma for respondent No.2.

It was argued by Mr. M.S. Gors, learned counsel for the workman that there is an un rebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No.2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2810.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड अदर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय चंडीगढ़ के पंचाट (संदर्भ संख्या 27/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/39/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2810.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. Case No. 27/2010) of the Central Government Industrial Tribunal Cum Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No. L-42012/39/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

Case No. 27/2010

Registered on 25.5.2010

Sh. Pyar Chand, S/o Sh. Bhagmal, Village Chullra, PO Karoti, Tehsil Saloni, Distt. Chamba, Himachal Pradesh

...Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla

...Respondents

APPEARANCES

For the Workman : Sh. M.S. Gorski for the workman

For the Management : Sh. V.P. Singh for respondent No. 1

Sh. H.R. Sharma for respondent No. 2

Respondent No.3 ex parte

AWARD

Passed on : 21.8.2014

Vide Order No.L-42012/39/2010-IR(DU), dated 12.5.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s AKS Engineers & Contractors, a sub contractor of M/s Italian Thai Development Public Co. Ltd. of NTPC, Kol dam in terminating the services of Sh. Pyar Chand w.e.f. 29/8/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.1 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No.2 who in turn engaged respondent No.3 as its sub-contractor. The workman was engaged by respondent No.3 on 19.8.2004 where he worked till 29.8.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.1 as well as by the Italian Thai Development Co. Ltd. who has been impleaded as respondent No.2, whereas M/s AKS Engineers and Contractors who is impleaded as respondent No.3 was proceeded against ex-parte.

Respondent No.1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No.2 in its separate written statement pleaded that workman was engaged by respondent No.2 who retrenched his services on partial completion of work after paying him Rs.11,340/- in lieu of notice period and retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.1 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma for respondent No.2.

It was argued by Mr. M.S. Gors, learned counsel for the workman that there is an un rebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No.2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2811.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड अदर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय चंडीगढ़ के पंचाट (संदर्भ संख्या 86/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/121/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2811.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. Case No. 86/2010) of the Central Government Industrial Tribunal Cum Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No. L-42012/121/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

Case No. 86/2010

Registered on 26.10.2010

Sh. Sonu Kumar, S/o Sh. Khundu Ram, Village and PO Dhar Tatoh, Tehsil Sundernagar, Mandi.

...Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla

...Respondents

APPEARANCES:

For the Workman : Sh. M.S. Gors for the workman

For the Management : Sh. V.P. Singh for respondent No. 1

Sh. H.R. Sharma for respondent No. 2

Respondent No.3 ex parte

AWARD

Passed on : 21.8.2014

Vide Order No.L-42012/121/2010 (IR(DU)), dated 29.9.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s AKS Engineers & Contractors, a contractor engaged by NTPC, Kol dam Hydroelectric Power Project, Bilaspur in terminating the services of their workman Sh. Sonu Kumar S/o Sh. Khundu Ram w.e.f. 3/9/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.1 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No.2 who in turn engaged respondent No.3 as its sub-contractor. The workman was engaged by respondent No.3 on 23.8.2004 where he worked till 3.9.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.1 as well as by the Italian Thai Development Co. Ltd. - respondent No.2; whereas M/s AKS Engineers and Contractors who is impleaded as respondent No.3 was proceeded against ex parte.

Respondent No.1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No.2 in its separate written statement pleaded that workman was engaged by respondent No.3 who retrenched his services on partial completion of work after paying him Rs.9075/- in lieu of notice period and retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.1 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma for respondent No.2.

It was argued by Mr. M.S. Gors, learned counsel for the workman that there is an un rebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No.2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2812.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड अदर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय चंडीगढ़ के पंचाट (संदर्भ संख्या 82/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/116/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2812.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. Case No. 82/2010) of the Central Government Industrial Tribunal Cum Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No. L-42012/116/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

Case No. 82/2010

Registered on 26.10.2010

Sh. Inder Raj, S/o Sh. Bakshi Ram, Village & PO Siwah, Tehsil & Distt. Panipat, Panipat.

...Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. The Managing Dir., M/s AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla
3. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.

...Respondents

APPEARANCES:

For the workman : Sh. M.S. Gorski for the workman

For the Management : Sh. V.P. Singh for respondent No. 1

Sh. H.R. Sharma for respondent No. 3

Respondent No.2 ex parte

AWARD

Passed on-- 21.8.2014

Vide Order No.L-42012/116/2010-IR(DU), dated 29.9.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s AKS Engineers & Contractors, a contractor engaged by NTPC Koldam Hydroelectric Power Project, Bilaspur (HP) in terminating the services of their workman Sh. Inder Raj S/o Sh. Bakshi Ram w.e.f. 1/8/2008, is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.1 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No.3 who in turn engaged respondent No.2 as its sub-contractor. The workman was engaged by respondent No.2 on 6.8.2004 where he worked till 31.7.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.1 as well as by the Italian Thai Development Co. Ltd. who has been impleaded as respondent No.3, whereas M/s AKS Engineers and Contractors who is impleaded as respondent No. 2 was proceeded against ex parte.

Respondent No.1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No.3 in its separate written statement pleaded that workman was engaged by respondent No.2 who retrenched his services on partial completion of work after paying him Rs.11340/- in lieu of notice period and retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.1 and 3 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma for respondent No.3.

It was argued by Mr. M.S. Gors, learned counsel for the workman that there is an un rebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No.2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2813.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, एनटीपीसी एंड अदर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय चंडीगढ़ के पंचाट (संदर्भ संख्या 36/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/10/2014 को प्राप्त हुआ था।

[सं. एल-42012/119/2009-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2813.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. Case No. 36/2009) of the Central Government Industrial Tribunal-cum-labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 17/10/2014.

[No. L-42012/119/2009-IR (DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer

Case No. 36/2009

Registered on 19.3.2010

Sh. Sushil Kumar S/o Sh. Shankar Ram, Village Jamthal,
PO Harnora, Bilaspur.

...Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla

...Respondents

APPEARANCES

For the workman : Sh. M.S. Gors for the workman

For the Management : Sh. V.P. Singh for respondent No. 1

Sh. H.R. Sharma for respondent No. 2

Respondent No. 3 ex parte

AWARD

Passed on-- 21.8.2014

Vide Order No.L-42012/119/2009-IR(DU), dated 3.3.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s AKS Engineers & Contractors in terminating the services of their workman Sh. Sushil Kumar w.e.f. 29/8/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No.1 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No.2 who in turn engaged respondent No.3 as its sub-contractor. The workman was engaged by respondent No.3 on 16.8.2004 where he worked till 3.9.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No.1 as well as by the Italian Thai Development Co. Ltd. who have been impleaded as respondent No.2; whereas M/s AKS Engineers and Contractors who were impleaded as respondent No.3 was proceeded against ex parte.

Respondent No.1 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No.2 in its separate written statement pleaded that workman was engaged by respondent No.3 who retrenched his services on partial completion of work after paying him Rs.9075/- in lieu of notice period and retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

In support of its case the workman has appeared in witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand Sh. Pankaj Kumar and Sh. H.R. Sharma, appeared on behalf of respondent No.1 and 2 and filed their affidavits reiterating the stand taken up in the respective written statements.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No.1 and Sh. H.R. Sharma for respondent No.2.

It was argued by Mr. M.S. Gors, learned counsel for the workman that there is an un rebutted statement of the workman to the effect that persons junior to the workman were retained in service at the time of his retrenchment as well the management employed several persons after the retrenchment and therefore the retrenchment of the workman is illegal.

I have considered the contention of the learned counsel.

The workman has deposed in his affidavit that the persons junior to him were retained in service and the management also employed more persons after his retrenchment. But he did not name the persons who were junior to him and were retained in service at the time of his retrenchment. Again he did not name the persons who were employed by the management after retrenchment. The workman was required to prove the said facts by leading cogent evidence in order to claim the relief and his bare statement that the persons junior to him were retained in service and the management employed more persons after his retrenchment do not carry any weight in the absence of any documentary and other convincing evidence on the file. Therefore it cannot be said that the persons junior to the workman were retained in service or more persons were employed by the management after his retrenchment and there is any violation of Section 25G and 25H of the Act. Rather the statement of Sh. H.R. Sharma shows that workman was paid due compensation as required under Section 25F of the Act at the time of effecting the retrenchment and the same was to be effected on account of partial completion of the work.

In result, it is held that action of the respondent No.2 in terminating the services of the workman is legal and the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2814.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 70/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/10/2014 को प्राप्त हुआ था।

[सं. एल-20012/142/2007-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2814.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 70/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 20/10/2014.

[No. L-20012/142/2007-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under
Section 10(1)(d) of the I.D.Act., 1947.

REFERENCE NO. 70 OF 2007.

PARTIES: The Organizing Secretary,
Jharkhand Colliery Mazdoor Union,
Krishna Nagar PO:BCCL Township,
Dhanbad.

Vs.

General Manager (Admn)
M/s BCCL, At: Koyla Bhawan,
PO: Koyla Nagar, Dhanbad.

L-20012/142/2007-IR(CM-I) dt.26.11.2007.

APPEARANCES:

On behalf of the workman/Union : Mr. N. M. Kumar,
Ld. Advocate

On behalf of the Management : Mr. D. K. Verma,
Ld. Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 3rd Sept, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/142/2007-IR (CM-I) dt. 26.11.2007.

SCHEDULE

“Whether the action of the Management of K.N.T.A. of M/s BCCL in denying regularization as Supervisor T & S Gr. B to Shri Sadhu Saran Prasad Carpenter is justified and legal? If not, to what relief is the concerned workman entitled

On receipt of the Order No L-20012/142/2007-IR (CM-I) dt. 26.11.2007 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 70 of 2007 was registered on 05th Dec., 2007 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own Learned Counsel respectively appeared in, and contested the case.

The case of workman Sadhu Saran Prasad as sponsored by the Jharkhand Colliery Mazdoor Union is that he was employed as the Carpenter, and was given the charge to get all repairs of Carpentry properly, and to report daily it to the Sr. Overseer (Civil) as per the Office Order No. BCCL/TAF-21/62024 dt.30.03.1984. He was complying the office order. Senior Overseer (Civil) T.A. Department, Koyla Bhawan directed him to deposit the carpenter tools store materials in the office store by August, 25, 1984 positively. Accordingly the workman complied the order. He has been performing as the Supervisor (Civil) since 1984 without payment of any remuneration for it. The post of work Supervisor (Civil) has been vacant since prior to the death of Late K.D Singh who was promoted as the General Supervisor from the Work Supervisor (Civil). The workman also drew the attention of the Authorities to payment of the scale of supervisor for the work being done by him accordingly. The Union had already demanded for regularization of the workman as the Work Supervisor (Civil) Grade-B (Tech.Sup.) from 30.03.1984, but the Management unjustifiably transferred him to Bhuli Town Administration where on resumption of duty w.e.f.

3.10.2005 as per the Office Order dt. 6/7.10.2005, he was allotted to work as a clerk. Alleging violation of Sec. 9A and 25 B of the Industrial Dispute Act, 1947, his continuous service on that post from 1984 to 2005, the Management instead of regularizing the workman in the post of Work Supervisor (Civil) has demoted him to the post of Carpenter as per the Office Order dt.30/1.10.2005 of the Personnel Manager (Co-ordination). The workman has been victimized for his active trade Union activities for workers/employees. The Management or their authorities do not follow the standing orders and the I.D. Act, 1947; rather they have adopted unfair Labour practice. The action of the Management for denial to his regularization as Supervisor T & S Grade 'B' is unjustified and illegal. So the workman is entitled to the differences of wages from 31.3.1984 till the date of work Supervisor with proper relief.

3. The Union concerned in its rejoinder has specifically denied the allegations of the O.P./Management, further stating that the I.I.No.37 is not applicable to the case of the workman as a supervisor in Technical & Supervisory Grade B. It is not a case of promotion rather that of proper designation Scale of pay. He is a permanent workman of BCCL, as his initial designation was of a Carpenter. The Management has availed of the benefits of his services as a Supervisor, neither the corresponding designation can be denied nor scale of pay can be equated with Services Linked Upgradation (SLU). Even on the basis of the principle of equal pay for equal work, a workman discharging similar duties as those in regular employment is entitled to regular pay and other emoluments.

4. Whereas challenging the maintainability of the reference in law or in fact, the contra case of the O.P./Management with categorical denials is that M/s BCCL being a Government Company registered under the Companies Act is a state in the terms of Art.12 of the Constitution of India. All the employment in the Company is public, and is based on the procedure as per the constitution and laws of the Company. There is a Cadre Scheme (E & M), Personnel Carpenter Helper to Pattern Maker formulated by JBCCI as per the Constitutional mandate and I.I. No.37 dt.25.9.1984. The workman is not entitled for promotion to the post of Supervisorship. The workman who is permanent employee of M/s BCCL is the carpenter by designation. As per the provision of NCWA, he was given Service-Linked -Upgradation (SLU) and placed in Cat. VI w.e.f. 1.7.1990 and again was given SLU w.e.f. 1.1.1999 and placed in T & S Gr.C. All promotions from Carpenter helper to Pattern Maker Cat. is effected as per the Cadre Scheme on the recommendation of Departmental Promotion Committee (DPC) duly constituted by the Cadre Controlling Authority subject vacancy as per the Man power Budget. The workman was never recommended by the D.P.C. for promotion in higher

post. Therefore, the workman was granted the aforesaid SLU as noted above. There is no provision for promotion of a Carpenter to the post of Supervisor according to the Cadre Scheme of the Carpenter. The sponsoring Union raised the Industrial Dispute in contravention of the Cadre Scheme as formulated by JBCCI. So the demand of the Union for regularization of the workman as Supervisor in T & C Gr. B is neither legal nor justified.

5. The Management in its rejoinder has categorically denied the allegations of the Union/workman as incorrect, further alleging that workman was never authorized by the Competent Authority to work as a Supervisor. Moreover, the workman has no appropriate qualification for working as a Supervisor (Civil). The transfer of an employee does not attract/apply to the Sec. 9 A of the I.D. Act. As such the workman is not entitled to any relief.

FINDING WITH THE REASONS

6. In the instant Reference, two witnesses, namely, WWI Shyam Sundar Sharma and WW2 Sadhu Saran Prasad the workman himself, on behalf of the Union concerned and MWI Amit Bhusan, Sr. Manager (Pers.) for the Management have been produced and examined respectively.

7. On perusal of the pleadings documents relied upon and the evidences adduced on behalf of the both the parties, it appears no dispute the designation of the workman Sadhu Saran Prasad is all along that of the Carpenter and factually the workman was never promoted to the post of Pattern Maker. In view of the aforesaid status of the workman with various other facts evolves the pertinent issue for adjudication as such:

Whether the workman's claim for his regularization as Supervisor T & S (Gr.B) is justified.

Sr. Counsel S. Paul, the Ld. Adv. for the workman submits that the Management has admitted the working of the workman as T & S Gr.B as per the office order dt. 17.1.2013 (Ext. W.1/7). The Management misinterprets it that it is Technical Supervisor, rather in order to declare Supervisor, there is no need to be Technical and it is also admitted by the Management that Mr. K.D. Singh and Mr. S.N. Singh had been promoted as Supervisor; as the post of Supervisor requires no technical as also admitted by the Management witness (MWI). Mr. Paul further submits the designation of the workman depends upon the nature of job he performed; that the Management has given the workman the grade but no designation. In such situation Implementation Instruction (I.I.No.37) related Cadre Scheme of E & M Personnel has no application in the reference, as it is not the demand for the promotion of Supervisor T & S, rather the workman was given the job of supervisor as per the Office Order dt.30.3.1984 of Shri Guru Nam Singh, the Engineer (Civil), (Ext. W.1 = W.1/1) and the

workman as per the letter of Mr. J.N.P. Singh, Sr. Oversear (Civil) dt. 24.8.1984 was directed to deposit the Store materials as per the list. According to Mr. Paul, Service Linked Upgradation was given to the workman so SLU/SLP can not be equated with the post of Supervisor; since a workman officiating higher Grade rendering continuous service demands for classification is not a demand for promotion and not beyond the jurisdiction of the Tribunal over the Industrial Dispute as held by the Hon'ble Supreme Court in the case of workmen H.L. Ltd. Vs Hindustan Lever Ltd. reported in AIR: 1984(SC) 1683 (CB). Regularization means as submitted by Mr. Paul a corrective procedure to regularize some methodological irregularity as held by Hon'ble Patna High Court in the case of Bihar Forest & Veg. Dept, Corp. Vs. State of Bihar, 1991 PLJR 377. Here the workman has been given the benefit of Service Linked Promotion in the Technical & Supervisory, Grade -C (Previous Grade/Cat)) and thereafter to T & S, Grade B w.e.f. 01.01.2007 as per the office order dt. 17.01.2013 (Ext. W.1/7), so he has to be regularized. Relying upon the case of workmen Vs. Bhurkunda Colliery of Central Coalfields, reported in 2006 SCC (L & S) 530 (DB) Mr. Paul submits as held therein, that in case of temporary or adhoc appointment for long, the Court presumes that there is a regular need for the services on a regular post and accordingly considers regularization, as 39 workmen in the same Colliery were regularized by the respondent employer.

8. Whereas vehemently opposing to the aforesaid argument of Mr. Paul, Mr. D.K. Verma, Learned Counsel for the O.P./Management has contended that admittedly the workman had been all along working as a Carpenter, and the Cadre Scheme of E & M Personnel provides for Carpenter Helper to Pattern Maker (Grade I) as last as per I.I.No.37 dt. 25.9.1984 (Ext.M.1); so there was no promotional avenue in the Cadre Scheme, the Management has given the workman the SLP/SLI Grade/Category for T. & S B w.e.f. 01.01.2007. According to the Job Nomenclature, as Mr. Verma has argued the posts of the Engineer the Senior Overseer and the Overseer under Grades A.B and C respectively come, and there is no post of any Supervisor as claimed by the workman; thus his claim or regularization as Supervisor T & S B is legally unsustainable.

On deep consideration of the materials available on the case record, I find that the entire claim of the workman for classification by way of regularization as Supervisor T & S Gr.B is based on the office order dt. 30.03.1984 (Extt. W.1 = W 1/1 being the same) which is nothing except a direction to look after the proper working of other Carpenter only for 4 months 25 days. This is not any authorization to work as Supervisor as self assumed by the workmen. The workman has all along been working as a Carpenter as

evident from his all aforesaid documents. His claim for it is not only against the Cadre Scheme but also against the nomenclature of the job. None of the rulings as cited by Mr. Paul Ld. Counsel for the workman appears to be applicable to the present case as it stands before me.

In result, it is, in the terms of the reference, hereby responded and accordingly awarded that the action of the Management of K.N.T.A. of M/s BCCL in denying regularization as Supervisor T & S Grade 'B' to Shri Sadhu Saran Prasad, Carpenter is quite justified and legal. Hence, the workman is not entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2815.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 98/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/10/2014 को प्राप्त हुआ था।

[सं. एल-20012/135/2012-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2815.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 98/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 20/10/2014.

[No. L-20012/135/2012-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under
Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 98 OF 2013.

PARTIES : The Vice President,
Jharkhand Mines Lal Jhanda Mazdoor
Union,
Mohalbani, PO : Bhowra,
Dhanbad
Vs.

The General Manager,
Barora Area of M/s BCCL,
PO : Nawagarh, Dhanbad.

**Ministry's Order No L-20012/135/2012-
IR (CM-I) dt.01.03.2013.**

APPEARANCES :

On behalf of the workman/Union : None

On behalf of the Management : Mr. D. K. Verma,
Ld. Advocate

State : Jharkhand Industry : Coal
Dhanbad, the 16th September, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No L-20012/135/2012-IR(CM-I) dt. 1.3.2013.

SCHEDULE

“Whether the action of the Management of WJA Moonidih of M/s BCCL in not paying the Trammig rate etc. as per NCWA-VIII to P.R. Workers of WJA Moonidih is fair and justified? To what reliefs are the concerned workmen entitled to?”

2. Not any Union Representative for Jharkhand Mines Lal Jhanda Mazdoor Union, Mohalla-Bani, Bhowra, Dhanbad nor any workers appeared nor any written statement with documents filed on their behalf but Mr.D.K.Verma, Ld.Advocate for O.P/Management as usual is present.

On going through the case record, I find three Regd. Notices dt.3.5.13, 22.10.13 and 14.3.2014 were issued to the Vice President, of the Union on his address noted in the very reference for filing written statement with documents on their behalf, yet till now neither of the Union Representative and the P.R.Workers of the WJA, Moonidha appeared and responded to any notices. As such the very conducts of the Union Representative as well as the workers (unlisted) appear to be quite reluctant to fight or pursue the case of final adjudication. In such circumstances, it appears no industrial dispute existent. Accordingly, an order for No Dispute Award is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2816.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण एवं श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 99 of 2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/10/2014 को प्राप्त हुआ था।

[सं. एल-20012/133/2012-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2816.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 99/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 20/10/2014.

[No. L-20012/133/2012-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under
Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 99 OF 2013.

PARTIES : The Vice President,
Janta Mazdoor Sangh
Vihar Building, PO: Jharia,
Dhanbad

Vs.

The General Manager,
Barora Area of M/s BCCL,
PO: Nawagarh, Dhanbad

**Ministry's Order No. L-20012/133/2012-
IR(CM-I) dt.01.03.2013.**

APPEARANCES :

On behalf of the workman/Union : None

On behalf of the Management : Mr. D. K. Verma,
Ld. Advocate

State : Jharkhand Industry : Coal
Dhanbad, the 16th September, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec.10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No L-20012/133/2012-IR(CM-I) dt. 1.3.2013.

SCHEDULE

“Whether the action of the Management of Phularitand Colliery/OCP of M/s BCCL in not regularizing S/Shri Amit Kumar, Vidya Sagar, Krishna Kumar Chouhan, Kamaljeet, Ramesh Thakur, Ramesh Kumar Pandey, Ashok Kumar Pandey and Santosh Kumar Sinha as Dispatch Loading clerk is fair and justified? To what reliefs are the concerned workmen entitled to?”

2. None appeared for Janta Mazdoor Sangh, Jharia, Dhanbad nor any of the eight workmen Amit Kumar & others appeared nor any written statements with documents filed on their behalf, whereas Mr. D.K. Verma, Ld. Adv. for the O.P./Management is present.

Perusal of the case record clearly reveals that three Regd. Notices dt. 6.5.13, 14.3.14, and 24.7.2014 were issued to the Vice President of the aforesaid Union concerned on the basis of his address as noted in the reference itself, yet none of the Union or the workmen concerned could respond to any of the notices of the Tribunal. The Union Representative and the workmen by their conducts appear to be quite uninterested in contesting or pursuing the case. Thus it appears no Industrial Dispute existent. Hence, accordingly an order for ‘No Award Dispute’ is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2817.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 96 of 2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/10/2014 को प्राप्त हुआ था।

[सं. एल-20012/5/2013-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2817.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 96/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 20/10/2014.

[No. L-20012/5/2013-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD**

PRESENT : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under
Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 96 OF 2013.

PARTIES : The Executive Member,
Jharkhand Colliery Shramik Union,
Vinod Market,
Near Randhir Verma Chowk, Hirapur,
Dhanbad..

Vs.

The General Manager,
Kusunda Area of M/s BCCL,
PO Kusund, Dhanbad.

**Ministry's Order No. L-20012/5/2013-IR
(CM-I) dt.21.3.2013**

APPEARANCES :

On behalf of the workman/Union : None

On behalf of the Management : None

State : Jharkhand Industry : Coal

Dhanbad, the 16th September, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec.10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/5/2013-IR(CM-I) dt. 21.03.2013.

SCHEDULE

“Whether the action of the Management of Kusunda Area of M/s BCCL in not fixing the basic pay of Smt.Kabiya Kamin correctly while converting from PR category to TR category is fair and justified? To what relief the concerned workwoman is entitled to?

2. Neither Union Representative for Jharkhand Colliery Sharmik Union, Hirapur, Dhanbad nor workwoman Smt. Kabiya Kamin appeared nor written statement with documents filed on her behalf just as none appeared for the O.P./Management.

On perusal of the case record, it stands clear that the case has all along been pending since 26.06.2013 for filing written statement with documents on behalf of the workwoman. It is also clear that three Regd. Notices dt. 6.5.13, 22.10.13 and 14.3.2014 were issued to the Union Representative on his address as noted in the Reference

itself, though Mr. Nitish Sahay Ld. Advocate for the O.P./ Management almost regularly represented the O.P./ Management except today The Union Representative and the workwoman by their own conducts clearly appear to be quite unwilling to pursue the case for its finality. It appears that there is no Industrial dispute existing now. Hence the case is closed and accordingly 'No Industrial Dispute' order is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2818.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टीस्को के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 108 of 1997) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/10/2014 को प्राप्त हुआ था।

[सं. एल-20012/230/1996-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2818.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 108/1997) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. TISCO, and their workmen, received by the Central Government on 20/10/2014.

[No. L-20012/230/1996-IR(C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under
Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 108 OF 1997.

PARTIES : The General Secretary,
Rastriya Mazdoor Union,
Telipara, Hirapur, Dhanbad.

Vs.

The General Manager,
Tata Iron & Steel Company Ltd.,
At/PO : Jamadoba, Dhanbad.

**Ministry's Order No L-20012/230/96/IR
(C-I) dt. 9.97**

APPEARANCES :

On behalf of the : Mr. Chandrika Prasad,
workman/Union Ld. Advocate

On behalf of the : Mr. D. K. Verma, Ld. Advocate
Management

State : Jharkhand

Industry : Coal

Dhanbad, the 30th Sept., 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec.10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No L-20012/230/96/IR(C-I) dt. 9.97.

SCHEDULE

“Whether the action of the management of Tata Steel Rural Development Society in stopping the employment of Shri Shyam Sunder Singh after engaging him as casual for a long period is legal and justified? If not, to what relief is the workman entitled ?

On receipt of the Order No. L-20012/230/96/-IR(C-I) dt.9.97. of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 108 of 1997 was registered on 21.10.1997 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own Representative/ Learned Counsels appeared in, and contested the case.

2. The case of workman Shyam Sunder Singh as sponsored by the Rastriya Mazdoor Union is that he was engaged as the Nursery Supervisor by the Management of Tata Steel Rural Development Society (TSRDS) in the year 1981 and worked till February 1993. He was paid Rs.24/- per day, but it was paid on monthly basis. His appointment was on the post of permanent and perennial nature. It continued uninterruptedly in service from 1981 to 1993. In view of the permanent nature of work, the Management is wing of M/s. TISCO. When the workman demanded for regularization in service with wages equal to those of the TISCO workers, he was stopped from work without complying with the provisions of the Industrial Dispute Act, 1947. At raising the Industrial Dispute by the

Union before the A.L.C.(C), Dhanbad for his regularization, the Management admitted in their comments that the Society had done afforestation welfare activities at different places around the colliery area for purpose of improving the environment condition. The Management also accepted the engagement of the workman as casual unskilled worker for performance of the duties incidental to afforestation work such as digging of earth, planting of scuplings, watering and putting enclosures on the sapling etc. the Workmen worked for ore than 240 days kms. a year and years together continuously till his illegal stoppage for work. His termination was without any notice.

Further alleged on behalf of the workman that the Management got sanctioned the post the workman was working on, but the Asstt. Manager (RD) Sunil Kumar Pandey got his brother-in-law employed on that post, and the was threatened of dire consequences and assured of the consideration for his regularization. The other workers of the Management have been regularized, and be made permanent employees of TISCO Ltd. such as S/Shri Ashok Mishra, Brij Kishor Singh, Sujan Mahato, Ram Kishun etc, in other jobs. But the workman has been deprived of his legitimate demand for regularization. In course of services on the fracture of his leg, the workman had got free treatment at the Tata Central Hospital, Jamadoba as the other employee. Only for the period of hospitalisation, he remained asbent, after which he joined his duty till termination of his service. The workman as victimized due to the Trade Union activity. The action of the Management is illegal and unjustified. The workman is entitled to reinstatement/regularization with full back wages.

The Union Representative in the rejoinder for the workman has specifically denied all the allegations of the O.P./Management, further alleging that the Tata Steel Rural Development Society is the Regd. one of Organizations, and a part and parcel of the TISCO. It carries on and promotes the activities of rural economy and welfare in Coal Mines and Steel Plants. It functions in the whole Tata's Organization.

3. Whereas the contra pleaded case of the O.P./Management with categorical denials is that the reference is legally unmaintenable. The Tata Steel Rural Development Society (TSRDS) is a Registered Organization as No. 438/78-79 of March 1979 under the Societies Registration Act, 1860 with the main object to undertake, carry on and promote the actives of rural economy and Welfare in the villages situated in Industrial are like coal, Mines and Steel Plants. The Society is an independent and autonomous institution, but not an Industry for any profit. It gets fund

from the subscriptions from its members who are four kinds; patrons, members, Coprporate bodies and honourry. The Society from time through the Managing Committee duly elected by its members as per the rules and bye-laws of it. The Committee runs the institution as a voluntary organizations carry on welfare activities of the villages for no profit. The Society maintains its own accounts under the audit statutorily every year. In course of welfare activities of the Society for the seasonal a forestation works at different villages adjacent to Industrial Areas of Coal Mines with a view to improve environmental condition of the villages during the years 1990, 1991 and 1992 Daily rated, Casual Workers were engaged for digging of earth, planting of saplings and putting enclosures around the saplings for their safety in its growing period whenever required. The workman Shyam Sundar Singh was accordingly engaged for the aforesaid work during the said years of the plantation season, he was paid his wages at prevalent rate slightly higher than the prescribed rate under Minimum Wages Act for agricultural work.

Since thereafter the Society had not got sufficient fund from its subscription of its members and others so it could not undertake welfare activities after 1993 in any industrial Area situated within the State of Bihar. The Society could not force to undertake the seasonal works and to provide Daily Rated/ casual workers the afforesting work at their discretion. The Society is a Registered Organization under the aforesaid Societies Registration Act and it is not an Industry for any profit, so the Central Government is not appropriate Authority to refer any Industrial Dispute because no Industrial Dispute exists at all. The workman was never engaged as a permanent worker on any permanent post. His engagement was on Daily Rated basis for a temporary period in connection with the aforesaid jobs purely dependent upon the season of rain and growing of scapplings. So the workman can neither claim for regular employment nor can have claim any grievance against the management for not getting a job.

The Management in its rejoinder has categorically denied all the allegations of the workman as false, baseless and imaginary. In view of the nature of the case of the Management, the violation of provisions of Industrial Dispute Act in terminating the workman is wrong and baseless. Further alleged on behalf of the Management that M/s TISCO has its own recruitment policy according to which it gives preference to the workmen belonging to local villages adjacent to its establishment. In that regard, some workers got their employment on the basis of selection, but not as the workmen of the Societies. The workman has not right to demand for regularization of his

service under the Management of the Society or M/s TISCO Ltd. So far as the Medical treatment of the workman at the Hospital of Tisco, he had got for his injury, is concerned, as the Society is the Voluntary Organization it requests different parties/Companies to render medical assistance as well as to pay subscriptions for undertakings welfare activities. At the request of the Society, the workman has got medical treatment for his injury during the period of his engagement as a Casual worker of the Society. As such the workman is not entitled any relief.

FINDING WITH REASONS

4. In the instant reference, WW1 Shyam Sunder Singh now as the Teacher on behalf of the workman and MW1 Sinjan Kumar Das the Supervisor for the Management have been produced and examined respectively. On meticulously going through the pleaded evidences of both the parties, the indisputable fact appears to be that workman Shyam Sunder Singh was a casual worker engaged by the Management of Tata Steel Rural Development Society.

Mr. Chandrika Pd., Learned Advocate cum the Union representative for the workman had worked under the Management from 1991 to 1993 during which for more than 240 days in a year, but on his representation for regularization of his service (Ext. W.7), he was stopped by the Management from the working; thereafter, the Management had engaged Ashok Mishra, brother-in-law of Sri Sunil Kumar Pandey, Manager, TSRDS, and some workmen Ashok Mishra, Brij Kishro Singh, Sujan Mahato others were regularized by the Management in their services, though he (workman) had got free medical treatment from the hospital of the Management at Jamadoba for his leg fractured in course of his service as the Doctors' prescription (Ext. W4 & 4/1). The statement of the workman (WW1) reveals that as per his two application dated 9.10.84 and 98.1984 (Ext. W.1 & 2 respectively), he had applied for sanction of job and labourers, he had got the order dt. 29.7.1984 from the Management (Ext. W.3) about pits. The workman had submitted his bill (for July 1986 - Ext. W.6) to the management for his work. There is also the site report dt. 6.10.88 (Daily Inspection Programme in Social Forestry for a week (Ext. W.6)) soothe workman's claim for regularization is justified as urged by his aforesaid Learned Counsel.

5. Just contrary to it Mr. D.K. Verma, Ld. Counsel for the O.P./Management has contended that the RSRDS is one NGO Registered under the Society Registration Act as per its Memorandum (Ext. M.1) and its works for welfare, but not for any profit; the workman was a casual worker in plantation job which was quite seasonal. This registered Society has no connection with the TISCO. The Registered Society has no authority to recommend to the latter for regularization of any such seasonal casual worker;

moreover, no casual worker in lack of employer-employee relationship can be regularized.

6. In view of the aforesaid materials available on the case record, I find that the Management of TSRDS being a Registered Society Registration Act is non-governmental Organisations, it is a charity or an Association independent of the management of Tisco and its business. The Registered Society does not appear to be for any business or industry, rather it carries on the social welfare activities such as forestation in the industrial area. It is an acknowledged fact the registered Society used to casually engage casual labourers like the present workman in plantation of sapling only in rainy season. So the job of the workman was purely temporary nature. The argument of Mr. Verma, Learned counsel for the O.P./management appears to be quite reasonable as that of Mr. Prasad, Learned Counsel for the Union seems meritless absolutely.

Under these circumstances, it is hereby awarded that no question arises as to the action of the Management of TSRDS in stopping the employment of Shri Shyam Sunder Singh, who has no proof of his working for a longer period of time which appears to be impossible in the nature of his purely temporary engagement for plantation. Hence the workman is not entitled to any relief. The alleged Industrial dispute devoid of the vital factor of "industry" is not at all an industrial dispute.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2014

का.आ. 2819.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 40 of 2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/10/2014 को प्राप्त हुआ था।

[सं. एल-20012/107/2012-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th October, 2014

S.O. 2819.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 20/10/2014.

[No. L-20012/107/2012-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD****PRESENT :** Shri Kishori Ram, Presiding OfficerIn the matter of an Industrial Dispute under
Section 10(1)(d) of the I.D. Act, 1947.**REFERENCE NO 40 OF 2013****PARTIES :** The Orgn. Secretary,
Rastriya Colliery Mazdoor Sangh,
Rajendra Path, Dhanbad**Vs.**General Manager (HR)
P.B.Area of M/s BCCL,
PO: Kusunda, Dhanbad**Ministry's Order No. L-20012/107/2012-
IR(CM-I) dt.11.02.2013****APPEARANCES:**

On behalf of the workman/Union : None

On behalf of the Management : None

State : Jharkhand Industry : Mines

Dated, Dhanbad, the 2nd Sept, 2014**AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/107/2012-IR(CM-I) dt.11.02.2013.

SCHEDULE

“Whether the action of the Management of M/s BCCL in not promoting Brijnandan Sah as Foreman in T&S Grade-C w.e.f. 10.05.1997 and in T&S Grade-B w.e.f. 21.10.2004 is fair and justified? To what relief is the concerned workman entitled to?”

2. Mr.N.G.Arun, the Union Representative-cum-Advocate for workman Brijnandan Sah is present but neither the workman appeared nor any written statement with documents filed on his behalf. Likewise none appeared for the O.P./Management.

On perusal of the case record, it transpires that despite three Regd. Notices having been issued to both the parties, the workman did not appear nor any written statement with his documents filed. The case has been pending right from very beginning for it. The conducts of the workman appears to be uninterested in contesting the case up to its final disposal. In such circumstances, the

case is closed as No Industrial Dispute. Accordingly, an order of ‘No Industrial Dispute’ existing is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2014

का.आ. 2820.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई के पंचाट (संदर्भ संख्या 13/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 14/10/2014 को प्राप्त हुआ था।

[सं. एल-41012/56/2006-आईआर (बी.-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 21st October, 2014

S.O. 2820.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.No. 13/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 14/10/2014.

[No. L-41012/56/2006-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT :** K.B. KATAKE, Presiding Officer**REFERENCE NO. CGIT-2/13 of 2007**Employers in Relation to the Management of
Western Railway

The Divisional Railway Manager (E),
Western Railway, DRM's Office
Mumbai Central
Mumbai-400 008

AND

THEIR WORKMEN

The Divisional Secretary
Paschim Railway Karmachari Parishad
Chapra Building
Near Plaza Cinema
Dadar (W)
Mumbai-400 028

APPEARANCES:

FOR THE EMPLOYER : Mr. Abhay Kulkarni,
Advocate.

FOR THE WORKMEN : Mr. M. B. Anchan,
Advocate

Mumbai, dated the 25th August, 2014

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-41012/56/2006-IR (B-I), dated 27.02.2007 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of Western Railway, Administration, Mumbai Division, Mumbai in not granting the upgradation benefits to Ms. Meena More, Head Clerk is justified? If not, what relief Ms. Meena More, Head Clerk is entitled to?”

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, second party union filed statement of claim at Ex-8. According to the second party union, workman Ms. Meena More was initially appointed as a Junior Clerk w.e.f. 14/6/1983. She was promoted as Sr. Clerk w.e.f. 24/12/1983. She was further promoted as Head Clerk w.e.f. 1/1/1984. The next promotion was to the post of Chief Clerk/Office Superintendent- II in the scale of Rs.5,500-9000. However instead of promoting her, the management promoted Ms. Neelam R. Karnik who was immediate junior to the workman in general category. She was promoted as a Head Clerk in the scale of 425-700/5000-8000 w.e.f. 18/7/1988 and as Chief Clerk/Office Supdt-II in the scale of 1600-2660/5500-9000 w.e.f. 11/10/1996 and further promoted as OS-I in the scale of Rs.6500-10500 from 8/1/2002. The workman was promoted as Head Clerk from 1/1/84 and she was not given any further promotion though she was senior to Ms. Neelam Karnik. Workman, Ms. Meena More had appeared for written test for the post of Chief Clerk/OS-II in the year 1996, 1998, 2000, 2002, 2006 & 2007. She had also appeared for viva in the year 1996, 1998 & 2000 before the Selection Committee. In the year 1998 she had passed the test for Office Superintendent-II with general standard. In spite of it she was not considered for promotion to the post of OS-II and those employees who have passed with relax standard with the taking of notional seniority marks have been considered for the post of OS-II in the scale of Rs.5500-9000. During last ten years the workman has not been communicated any adverse remarks against her in annual confidential report. The promotion order if any during the period 17/6/1995 to 7/3/2002 as per base grade seniority shall be revised according to the instructions contended in the Railway Board's letter dt. 8/3/2002. Till date no

seniority has been revised by the administration. The Railway Administration has promoted several juniors to the workman to the post of Chief Clerk/OS-II and Office Superintendent. Therefore union prays that workman may be promoted to the post of Chief Clerk/ Office Superintendent and as OS-I from the dates her juniors were promoted and the action of the management not granting upgradation benefit to the workman be declared not justified and she be given arrears of wages from the date of her promotion as per the seniority.

3. The first party management resisted the statement of claim vide their written statement Ex-9. According to them the competent authority of Railway after perusing the reference and after taking overall picture with regard to the service record and merit criteria, have decided to promote Ms. Meena More to the post of OS-II in the scale of 5500-9000 (RSRP) w.e.f. 20/09/1998 on pro forma basis on pay Rs.6375/-. They further submitted that select list for promotion to the post of OS-I scale Rs.6500-10500/ 9300-34800 & Rs.4600 GP was issued by the Competent Authority on being found suitable, the name of Ms. Meena More OS-II in the scale of Rs.9300-34800 & Rs.4200 GP is interpolated in the same. In consequence of the said interpolation Ms. Meena More OS-II E/RTI Cell is promoted to the post of OS-I in the scale of Rs.9300-34800 & Rs.4600 GP w.e.f. 9/5/2006 on pro forma basis with reference to the date of promotion of her junior. Ms. Meena More had duly accepted the aforesaid order without any protest and has already assumed charge of the new post w.e.f. 20/02/2010. In the circumstances according to the first party the substantial part of the reference has become infructuous. According to them the workman is not entitled to the arrears of wages on account of ground that she has not worked on promotion post and as per clause 228 of the Indian Railway Establishment Manual which provides that in case of pro forma promotion no arrears shall be payable to the concerned workman.

Workman Ms. Meena has accepted the pro forma promotion without any protest and has already assumed her charges. Hence she is estopped from claiming any arrears of wages for promotional posts where she has not actually worked. Therefore the management prays that the reference be dismissed with cost.

4. Following are the issues for my determination. I record my findings thereon for the reasons to follow :

Sr.No. Issues Findings

- | | |
|--|------|
| 1. Whether the management of Western Railway, Mumbai Division is justified in not granting the upgradation benefits to Ms. Meena More, Head Clerk? | Yes. |
|--|------|

2. Whether Ms. Meena More is entitled to the upgradation benefits claimed for? No.
3. What order? As per order below.

REASONS

Issues nos. 1 & 2:-

5. Both these issues are in respect of the benefit for the arrears from the due date of promotion. Therefore both these issues are discussed and decided simultaneously. In this respect the fact is not disputed that due to administrative error workman Ms. Meena More was not promoted to the post of Chief Clerk/Officer Superintendent-II w.e.f. 20/09/1998. The fact is also not disputed that her further promotion was due as OS-I in the pay scale of 9300-34800 + GP Rs.4600/- from 9/5/2006. The fact is also not disputed that after this reference, in the year 2010 the management realized the mistake and they have given proforma promotion to the workman from the due date without any arrears. According to the management the workman is not entitled to the arrears as Rule 228 of Indian Railway Establishment Manual prescribes that in case promotion is not given to any employee due to administrative error, proforma promotion can be given to him from the due date. In such cases the workman is not entitled to the arrears. Secondly the Id. adv. for the first party submitted that the workman is estopped from claiming the arrears as she has accepted the proforma promotions from the year 2010 without any protest. The Id. adv. for the first party submitted that above referred Rule 228 is still in existence as the same is not set aside by any Court. After perusing the language of this Rule 228 it is clear that due to administrative errors if a staff is overlooked for promotion to higher grade, he can be given proforma promotion from the due date. However he is not entitled to the arrears on that account as he did not actually shoulder the duties and responsibilities of the higher post. Furthermore though the reference was pending the workman has accepted the promotion unconditionally without any protest.

6. In the circumstances I hold that though the workman was entitled to the promotion from the due dates, as she had not worked on the promotional post, she is not entitled to the arrears claimed in this reference. Though the management was not justified in giving her promotion on the due dates, the action of the management refusing to pay arrears is quite justified. Accordingly I hold that the management was justified in not giving the upgradation benefits / arrears of upgradation to the workman. Accordingly I decide this issue no.1 in the affirmative. Consequently I hold that the workman is not entitled to the upgradation benefits claimed for. Accordingly I decide this issue no.2 in the negative. In this respect the fact is not disputed that during pendency

of the reference the management has given the proforma promotions to the workman from the due dates. Therefore the prayer in respect of directing to give promotion has become infructuous. The only point was to be considered in respect of arrears which was decided against the workman.

7. In this respect the fact is required to be taken into account that the workman was not promoted on the due dates due to administrative error and the workman was required to raise industrial dispute. She was unnecessarily required to fight the legal battle for her promotion. Thereafter during pendency of this reference, management realized the administrative error and has given her the two proforma promotions w.e.f. 1998 & 2006. As per Rule 228 and the reasons discussed herein above the workman is not entitled to the arrears in case of proforma promotions. However she is very well entitled to the cost of the proceeding. Thus to meet the end of justice I think it proper to award cost of Rs.25,000/- to the workman. Accordingly I dispose of this reference as dismissed.

ORDER

The reference is disposed of with cost of Rs.25,000/- payable by the management to the workman.

Date: 25/08/2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2014

का.आ. 2821.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एच डी एफ सी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के पंचाट (संदर्भ संख्या 115/11) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/10/2014 को प्राप्त हुआ था।

[सं. एल-12012/88/2011-आईआर (बी.-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 21st October, 2014

S.O. 2821.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 115/11) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, No.2 Delhi as shown in the Annexure, in the industrial dispute between the management of HDFC and their workmen, received by the Central Government on 10/10/2014.

[No.L-12012/88/2011-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT - II, KARKARDOOMA
COURT COMPLEX, DELHI****Present : Shri Harbansh Kumar Saxena****ID No. 115/11**

Sh. Vikash Lahariya,
353 , Bankey Lal Market,
Badarpur, New Delhi.110044.

Versus

1. Vice President Human Resources,
HDFC Bank, Human Resources Division,
HDFC Bank House,
2nd floor, Sonpati Bapat Marg,
Lawer Parcel, Mumbai.
2. Zonal Head,
HDFC Bank Limited,
2E /25 1st floor, Jhandewalan Extn.,
ND-110055

NO DISPUTE AWARD

The Central Government in the Ministry of Labour vide notification No L-12012/88/2011-IR(B-I)) dated 30.11.2011 referred the following industrial Dispute to this tribunal for adjudication :-

“Whether the action of the management of M/s. HDFC Bank Ltd. in terminating the services of Sh. Vikash Lahariya is legal and justified? To What relief the workman is entitled?”

On 19.12.2011 reference was received in this tribunal. Which was register as I.D No. 115/11 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant Sh. Vikash Lahariya not filed claim statement but management in response to reference filed response wherein it mentioned as follows:-

MOST RESPECTFULLY SHOWETH:

At the outset the Management submits that the Workman has not filed any Claim Petition and /or has not supplied any claim petition inter alia substantiating and/or prove his alleged claim before this Hon'ble Court. In any case, the Management denies all allegations as though the same thereof have been specifically set forth and traversed herein, save and except to the extent the content(s) thereof are specifically admitted. The Management thought reserves its right to file detailed and para -wise reply to the claim petition, in case the Workman has filed the same.

Without prejudice to the below facts, it is submitted that this Hon'ble Court should be pleased to dismiss the present case on the ground that no claim petition has been filed by the Workman till date. Apart from the above, it is submitted the Workman is absent from the proceedings right from the inception of the case and has not come forward to file any claim petition.

The present reply is being filed by the Management as per the direction issued by this Hon'ble Court (despite the objection put forth by the Management) that no claim petition has been filed by the Workman and hence this Hon'ble Court may be pleased to dismiss the same.

PRELIMINARY OBJECTIONS

The following preliminary objections (the “PO”) goes to the root of the matter in dispute and without prejudice to each of the POs; the alleged Claim (though no claim petition has been filed) is liable to be dismissed on each of the grounds set out hereinafter:

- I. The Workman has filed the present case with malafide intention, which contains false averments and incorrect facts (as explained hereinafter). It is an effort to harass the Management and to put undue pressure on them so that the Management indirectly succumbs to the illegal demand and gratification of the Workman. As such the claim is liable to be dismissed on this ground alone with exemplary cost with regard thereto as per provisions of Section 35 A of CPC, 1908. The Workman who is seeking equitable relief must prove his bonafide intention (viz. a viz. his performance standards) and should first come forward before this Hon'ble court with clean hands.
- II. At the outset, the Workman has not come with clean hands before this Hon'ble Court. The alleged relief (though no claim petition has been filed by the Workman) sought by the Workman are not maintainable. Hence, the present claim is liable be dismissed forthwith on the grounds of being malafide, baseless and lacking any bonafide cause of action.
- III. As per the Fixed Term Contract dated October 25, 2008, the Management reserves the right to terminate the services of the Workman without giving any compensation or notice. The Management had given numerous opportunities to improve his performance, however, as the Workman failed to meet the specified work/task and no sufficient cause was given for his non-performance and further the Workman went on leave from 24.07.2009, which was not approved or sanctioned by the Management and thereafter, the workman never turn back to office as he voluntarily disengaged from his services. The Workman/

Claimant took the said leaves, without giving any prior intimation to the Management's senior Officers. In view of the Workman's constant default vis-à-vis clause 7 of the FTC and his unwarranted ceaseure from the services of Management, the employment of Workman got terminated in August 2009. In view thereof, it is apparent that the Workman had concealed this material fact from this Hon'ble Court and has approached this Hon'ble Court with unclean hands stating the distorted and inchoate facts, with malafide intentions of misleading this Hon'ble Court. The alleged Claim (though no claim petition has been filed by the Workman) suffers from the virus of suggestio falsie and suppressio varie as explained in the subsequent pleadings. Hence, the present alleged claim (though no claim petition has been filed by the Workman) is liable to be rejected at the threshold.

- IV. The relationship between the Claimant and the Management are governed by the private contract between the parties and hence the Claimant cannot be termed as 'Workman' as defined under Section 2 (s) of the Industrial Dispute Act, 1947 (hereinafter referred to as the "Act"). Thus, the Workman is not entitled to invoke the provision of the said Act. The Workman has approached this Hon'ble Court on taking all possible frivolous grounds against the Management /Bank though such grounds are just a camouflage to coerce the Management to pay the alleged amount or relief.
- V. The engagement/appointment of the workman governed by the personal contract. Therefore, the termination of the personal contract does not fall under the purview of the definition "Industrial Dispute" as defined under Section 2 (k) and /or under section 2A of the Act. Hence the alleged Claim (though no claim petition has been filed by the Workman) is not maintainable & liable to be dismissed by imposing heavy cost.
- VI. The present issue/dispute is related with two individual parties, and can't term as Industrial Dispute as defined under the Industrial Disputes Act, 1947. Moreover, the Workman has not made out and/or shown how the said provisions are attracted in the instant case. As in the catena of judgments, it has been held that in order to invoke the adjudicatory machinery of the this Hon'ble Court, the existence of an industrial disputes on the date of invoking the jurisdiction under the Act is a basic requirement, the absence of which will take away the jurisdiction of the Labour Court to proceed further with the adjudication. Hence the alleged claim (though no claim petition has been filed by the Workman) is liable to be dismissed not only on the

ground of No Cause Of Action arises in favor of the Workman and against the Management and no relief can be granted by this Hon'ble Court but also this Hon'ble Court does not have jurisdiction to entertain the present matter in view of the bar imposed as per Section 10 (4A) of the Act.

PRELIMINARY SUBMISSIONS/FACTS:

1. The Management is a banking institution having its registered office at HDFC Bank House, Senapati Bapat Marg, Lower Parel (West), Mumbai 400013 and is engaged in the legitimate business of providing banking service and is having its branch office at B-2, Paschim Vihar, New Delhi.
2. That Mr. Raja Saha, Branch Manager and duly authorised officer of the Management has been duly authorised to represent the Management and to defend the cases filed against the Bank before this Hon'ble Court. The Authority Letter executed by the HDFC Bank Ltd. in favor of Mr. Raja Saha is annexed herewith as ANNEXURE M - 1.
3. That Mr. Vikash Lahariya i.e. the Workman had applied for the post of 'Contract Sales Executive'. The Workman provided it's Resume and other related documents. The interview was conducted and the Management considered his candidature for the Post of 'Contract Sales Executive'. As per the procedure, Interview Record Sheet was prepared and New Recruit Details (NRD) Format was also duly filled by the concerned officer of the Management inter alia giving the details, where the Fixed Term Contract shall be dispatched to the Workman. The Original New Recruit Details (NRD) Format, Resume, Certificates, Interview Record Sheet are annexed herewith as ANNEXURE M - 2 (Colly).
4. Accordingly, a Fixed Term Contract dated October 25, 2008 (hereinafter referred to as "FTC") was executed between the parties, whereby the Workman agreed to adhere to the terms of employment as enumerated there under. The appointment of the Workman was purely Contractual and in view thereof, the FTC (as stated above) was executed in between the parties; for a term of two years with effect from November 1, 2008. Pursuant thereof, the employee code i.e. 66061 was generated for the Workman/Vikas Lahariya. The relevant terms of the contract, which are necessary for the adjudication of the present matter are reiterated herein under for the ready reference of the this Hon'ble Court:

Clause 4 : "You will be entitled to leave only on completion of Six months from the Date of Joining as a Contract Sales Executive. You will be entitled to Twenty Five working days annual leave in a calendar year at a time to be determined by the Bank, subject to exigencies of service.

In case you are already on leave of any sort you may be recalled by the Bank if circumstances warrant your immediate return on duty.

Clause 5 : You will not be entitled for any sick leave. Except in exceptional cases leave may be granted at the discretion of the Bank after adjusting the leave of 25 days, but the Bank reserves the right to terminate your employment forthwith and without previous notice in the event of absence of work due to ill health for a periods totaling at least four weeks in consecutive period of twelve calendar months”.

Clause 7 : “Notwithstanding the provisions of clause 11 hereof in the event of any willful or continued neglect by you of your duties, any serious misconduct or any breach of this contract on your part, the Bank reserves the right to terminate your employment forthwith and without notice or payment in lieu of notice and you shall be bound by such a decision and shall not question the same.

Clause 11 : “The contract may be terminated by either party giving to the other not less than one month’s and not more than thirty days prior written notice to that effect expiring at any time after the commencement of your service hereunder or by the Bank paying you one month’s basic salary in lieu of Notice (wherein before or after such notice of termination is given by you). The Bank shall be entitled, whether such notice of termination is given by you or the Bank, to require you to proceed on leave at the time of receiving or giving such notice of termination or at any time thereafter. The unavailed leave may be adjusted against the notice period, at the discretion of the management. The Bank shall also be entitled to terminate your service forthwith by paying one month’s salary in lieu of notice.

Clause 12 : “On expiry of two years from the date of commencement of this contract, your services will automatically come to an end without any further act of the Bank.

From the terms of the FTC, it was apparent that the continuation of the employment of the Workman would be subject to adhering the terms and FTC as well as meeting of the business targets determined by the Bank from time to time. The Original FTC dated October 25, 2008 is annexed herewith as ANNEXURE M - 3.

5. That Vikash Lahariya (in terms of the FTC) started working with the Management /Bank with effect from November 1, 2008 under the Managerial Capacity and was drawing monthly salary of Rs. 4,500/- (Rupees Four Thousand Five Hundred Only) and monthly conveyance allowance of Rs. 2,500/- (Rupees Two Thousand Five Hundred Only). Apart from the salaries and the allowances, the Workman was provided group medical insurance for a

sum of Rs. 50,000/-. The Workman was even provided as well as asked to be participating in the Bank’s Staff provident Fund.

6. In terms of the FTC, the Workman was required to perform his work at New Delhi or such other place or places in or outside India as the Bank or its associates or subsidiaries may from time to time specify. The Workman was to report to his Reporting Manager namely Shri Mahesh Joshi at Jhandewalan Extn., New Delhi branch of the Bank. In view of the employment, a Salary Bank Account bearing no. 0013851040000262 was also opened in the name of the Workman, wherein the monthly salary of the Workman was directly deposited by the Bank.

7. That the Workman was assigned his work and responsible for managing the work during his tenure are as under:

- (a) The workman was mainly responsible for maintaining the relationship with merchants mapped him;
- (b) He was responsible for generation of volume and cross sell;
- (c) He was responsible to make daily visits to merchants and ensure that the merchants contribute volume for the Bank;
- (d) To complete the profile sheet for the complete merchant base mapped to him, which give details of the merchant;
- (e) For managing the relationship with the merchant, in case if any merchant has any sales/service related issues;
- (f) To ensure that the merchants utilize/inform any additional features provided by the Bank;
- (g) For sourcing of merchants;
- (h) To collect KYC documents for sourcing merchants form and send the same CANI/branch for CA opening;
- (i) For sourcing merchants from competition banks.

It is pertinent to state that the performance of the Workman was under par, right from the inception of his job and much below the assigned work given by the Bank. That the Workman (during tenure of his job) never perform his duties successfully.

8. The Workman was coached, trained and assisted to carry on the job assigned by the Bank. It was noticed that the Workman, on numerous occasions failed to perform his duties under the FTC. That the Management through its Reporting Manager constantly and reminded the Workman to improve his performance and also pointed out the derelictions in his duty, which had no heed on the Workman.

9. Despite, numerous opportunities given to the Workman to improve his performance, he failed to perform his duties/responsibilities. Instead of concentrating on the service and improving his performance, the Workman went on leave without any due approval of his immediate Reporting Manager with effect from July 24, 2009. That thereafter, the Workman never contacted the Bank and voluntarily disengaged his services without intimating Management with the plausible reasons. Moreover, the Workman never assigned his duties to any other manager nor he has given charge of his job and responsibilities of the team to any other employee, which clearly shows breach of his responsibilities. Failing to improve his performance and further going on leave without any due approval /sanction. In view of the Workman's constant default vis-à-vis clause 7 of the FTC and his unwarranted ceaseure from the services of Management, the employment of Workman got terminated in August 2009. The table below shall show the details of number of days worked, number of days absent and the salary received and credited the Salary Account of the Workman:

S#	Month	Number of days present	Salary paid
1	Jan '09	31	Rs. 20,767/- salary for the month of December' 08 and Jan, 2009 along with incentive.
2	Feb '09	28	Rs. 7,025/- salary along with incentive
4	Mar '09	31	Rs. 7300/- salary along with incentive.
5	April '09	30	Rs. 8,175/- salary along with incentive.
6	May '09	31	Rs. 7,775/- salary along with incentive.
7	June '09	30	Rs. 8,100/-, salary along with incentive.
8.	July '09	23	Rs. 8,600/- salary along with incentive.

The copy chart explaining the Salary pay slip for the workman during the tenure of his service is annexed herewith as ANNEXURE M - 4. The Workman duly acknowledged and utilized the Salary paid for the notice period; meaning thereby accepting the termination.

10. Despite, failure in achieving the targets as well as going on unapproved /unsanctioned leave, Vikash Lahariya (not being Workman as per the provision of the Act) has approached this Hon'ble Court with the alleged present false, frivolous and vexatious claim (though no claim petition has been filed) before this Hon'ble Court. That prima facie the alleged Claim is clearly an afterthought and has been instituted by the Workman with malafide intention and ulterior motive. It is an effort to harass the Management to put an undue pressure on them so that the Management in directly succumb to the unlawful demands of the Workman. That from the above,

it is evident that the Workman has been unnecessarily filing the frivolous and futile litigations against the Bank, who acted within the terms of the FTC. It is the Workman, who is in breach of the terms of the FTC and as such is estopped from alleging to the contrary. The Management reserves its rights to initiate proper proceeding against the Workman for the loss of name and damages for the wrongful effort to defame the reputation of the Management Bank.

PARA-WISE REPLY TO THE CLAIM:

AS NO CLAIM PETITION HAS BEEN FILED BY THE WORKMAN; HENCE THE MANAGEMENT IS UNABLE TO GIVE ANY PARA WISE REPLY TO CLAIM ON MERIT AND RESERVES IT RIGHT TO REPLY AS WHEN THE NEED ARISES.

PRAYER

IT IS THEREFORE, MOST RESPECTFULLY PRAYED THAT THIS HON'BLE COURT MAY BE PLEASED TO:

- Dismiss the above alleged Claim, in the interest of justice and equity with punitive and exemplary costs being awarded to the Management; and in that behalf
- pass any order or further order/orders as this Hon'ble Court may deem fit and proper.

AND FOR THIS ACT OF KINDNESS, THE MANAGEMENT AS IN DUTY BOUND SHALL EVER PRAY.

On the basis of non-interestedness of workman. The proceeding of this case is not liable to be proceeded further. Hence proceedings of the case are liable to be dropped and no dispute award is liable to be passed. Which is liable to be passed.

No Dispute Award is accordingly passed.

Dated : 28/08/2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2014

का.आ. 2822.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जयपुर के पंचाट (संदर्भ संख्या 60/1991) को प्रकाशित करती है जो केन्द्रीय सरकार को 14/10/2014 को प्राप्त हुआ था।

[सं. एल-41012/32/91-आईआर (बी.-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 21st October, 2014

S.O. 2822.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 60/1991)

of the Cent. Govt. Indus. Tribunal-cum-Labour Court, No.2 Jaipur as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 14/10/2014.

[No. L-41012/32/91-IR(B-I)]

SUMATI SAKLANI, Section Officer

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं० सी.आई.टी. 60/1991

रैफरेंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक एल-41012/32/91-आई.आर. (डी.यू.) दिनांक 30.10.1991

घीसूलाल पुत्र श्री बुद्धाराम टि.नं. 24405, इलैक्ट्रोप्लेडर ग्रेड-II, आर्गेनाइजिंग सीक्रेटरी, पश्चिम रेलवे कर्मचारी परिषद, रेलवे क्वार्टर संख्या 1188/ए, रामगंज रेलवे कॉलोनी, अजमेर-305001

--- प्रार्थी

बनाम

1. महाप्रबंधक, पश्चिम रेलवे, चर्चगेट, बम्बई।
2. मुख्य कारखाना प्रबंधक, लोको अजमेर।
3. उप मुख्य यांत्रिक अभियंता कैरेज का. अजमेर।

---अप्रार्थीगण

उपस्थित

पीटासीन अधिकारी: श्री हेमन्त कुमार जैन,
आर.एच.जे.एस.

प्रार्थी की ओर से : श्री विक्रम सिंह नैन

अप्रार्थीगण की ओर से : श्री पूर्णेन्द्र शर्मा

दिनांक अवाई : 07.02.2014

अवाई

1. भारत सरकार के श्रम मंत्रालय की आज्ञा क्रमांक 41012/32/91 दिनांक 30.10.1991 से निम्न अनुसूची का विवाद "Whether the the action of the management of Western Railway, Ajmer in terminating the services of Shri Ghisulal, Electroplater, T, No. 24405/25 in C&W at Ajmer w.e.f. 08.01.88 is justified? If not, to what relief the workmen concerned is entitled to?" अधिनिर्णय हेतु इस अधिकरण को प्राप्त हुआ है।

2. प्रार्थी श्रमिक की ओर से स्टेटमेंट ऑफ क्लेम पेश कर कथन किया कि प्रार्थी की नियुक्ति दिनांक 02.05.76 को कल्चरल स्पोर्ट कोटे के आधार पर

खलासी के पद पर कैरिज कारखाने में हुयी थी। प्रार्थी द्वारा अपनी भर्ती के समय अपनी शैक्षणिक योग्यता एवं जन्म तिथि का कोई प्रमाण प्रस्तुत नहीं किया गया था, केवल घरवालों के बताये अनुसार जन्मतिथि लिखवायी थी और फार्म भरने वाले लिपिक एवं सर्विस शीट भरने वाले बाबू ने उसे आठवीं पास लिख दिया था। प्रार्थी को केवल नाटक में सफल एवं सबल अभिनय के प्रदर्शन के आधार पर ही नौकरी में लिया गया था। प्रार्थी के विरुद्ध शिकायत करने वाले व्यक्ति ने कोई भी प्रमाण पत्र प्रस्तुत नहीं किया कि प्रार्थी कोई शैक्षणिक योग्यता रखता है या आयु गलत है। अप्रार्थी द्वारा विभागीय जांच में अनियमितता बरतते हुये विभागीय जांच कर गलत ढंग से सेवापृथक कर दिया गया। प्रार्थी द्वारा सेवापृथक आदेश के विरुद्ध अपील की गयी, जिसका कोई उत्तर नहीं दिया गया। प्रार्थी सेवापृथक की दिनांक से ही बेरोजगार है। अतः प्रार्थी को पुनः सेवा में लिया जाकर सभी लाभ-परिलाभ दिलाये जावें।

3. अप्रार्थीगण की ओर से स्टेटमेंट ऑफ क्लेम का जवाब प्रस्तुत कर प्रारम्भिक आपत्ति की कि प्रार्थी श्रमिक की परिभाषा में नहीं आता है तथा औद्योगिक विवाद अधिनियम 1947 के प्रावधानों के अन्तर्गत इस विवाद को सुनने का अधिकार न्यायाधिकरण को नहीं है। प्रार्थी द्वारा नियुक्ति के समय गलत जन्मतिथि एवं शैक्षणिक योग्यता दिये जाने पर नियमानुसार नौकरी से हटाया गया है। गुणावगुण पर अप्रार्थीगण का कथन है कि प्रार्थी की नियुक्ति कल्चरल कोटा से नहीं की जाकर अनएप्रूड सब्सीड्यूट खलासी के पद पर दिनांक 02.07.76 को की गयी थी। प्रार्थी द्वारा भर्ती के समय अपनी शैक्षणिक योग्यता आठवीं बतायी गयी थी तथा साक्ष्यांकन प्रपत्र भी पेश किया गया था, जिसमें आठवीं कक्षा उत्तीर्ण व स्कूल छोड़ने की तारीख 02.07.62 लिखी हुयी थी। रेलवे प्रशासन द्वारा प्रार्थी की आयु व शैक्षणिक योग्यता की संबंधित विद्यालय से जांच करने पर, प्रार्थी का उक्त शाला में अध्ययनरत नहीं होना और आठवीं कक्षा उत्तीर्ण नहीं करना पाये जाने पर नियमानुसार प्रार्थी के विरुद्ध गलत तथ्य बताकर नौकरी प्राप्त करने के आरोप में विभागीय जांच कराकर आरोप सिद्ध पाये जाने पर दिनांक 08.01.88 को सेवापृथक किया गया है। जो विधिअनूकूल है। अतः क्लेम खारिज किया जावे।

4. न्यायाधिकरण के आदेश दिनांक 05.10.98 द्वारा विभागीय जांच को अशुद्ध एवं अनुचित घोषित किया गया। विपक्षी की ओर से कोई साक्ष्य पेश नहीं होने पर दिनांक 19.05.99 को साक्ष्य विपक्षी बंद की गयी। साक्ष्य प्रार्थी में स्वयं प्रार्थी श्री घीसूलाल का शपथ पत्र पेश हुआ है।

5. न्यायाधिकरण के आदेश दिनांक 23.08.99 द्वारा प्रार्थी को अंतरिम राहत के रूप में पचास प्रतिशत वेतन अदा करने के आदेश दिये गये। विपक्षी द्वारा अन्तरित राहत का भुगतान नहीं किये जाने पर न्यायाधिकरण द्वारा अवार्ड दिनांक 31.07.2000 द्वारा प्रार्थी को पुनः सेवा में लिया जाकर पिछले वेतन भत्तों सहित सेवा में लिये जाने का आदेश दिया गया।

6. अप्रार्थीगण द्वारा माननीय उच्च न्यायालय में उक्त अवार्ड के विरुद्ध रिट याचिका पेश किये जाने पर माननीय उच्च न्यायालय द्वारा पुनः प्रकरण का गुणावगुण पर निस्तारण किये जाने के आदेश दिये गये।

7. उभय पक्षों की बहस सुनी गयी। पत्रावली का अवलोकन किया गया।

8. प्रार्थी प्रतिनिधि का कथन है कि प्रार्थी की नियुक्ति दिनांक 02.07.76 को कल्चरल स्पोर्ट्स कोटे से खलासी एवजी के पद पर अस्थायी रूप से की गयी थी, जिसे बाद में स्थायी कर दिया गया। प्रार्थी को व्यावसायिक परीक्षा उत्तीर्ण करने पर दिनांक 15.11.1980 को इलैक्ट्रोप्लेटर ग्रेड-I एवं दिनांक 03.04.86 को इलेक्ट्रोप्लेटर ग्रेड-II के पद पर पदोन्नत किया गया है। प्रार्थी प्रतिनिधि का तर्क है कि विपक्षी की ओर से प्रार्थी के नियमितीकरण, पदोन्नति, सर्विस बुक आदि न्यायाधिकरण के आदेश के बावजूद प्रस्तुत नहीं किये गये हैं। उक्त रिकार्ड खोने के संबंध में कोई रेकार्ड पेश नहीं किया गया। प्रार्थी प्रतिनिधि का तर्क है कि विपक्षी द्वारा खलासी के पद पर क्या निर्धारित योग्यता थी, इस संबंध में कोई विज्ञापन तथा नियम पेश नहीं किये गये हैं। प्रार्थी की नियुक्ति किस कोटे के तहत की गयी, इस संबंध में भी कोई प्रलेख पेश नहीं किया गया है। प्रार्थी प्रतिनिधि का कथन है कि प्रार्थी द्वारा शैक्षणिक योग्यता के संबंध में कोई प्रमाण पत्र पेश नहीं किया गया है और जन्म तिथि माता-पिता के बताये अनुसार लिखायी गयी है। प्रार्थी द्वारा कोई फर्जी दस्तावेजात् प्रस्तुत कर नौकरी प्राप्त नहीं की गयी है। विपक्षी की ओर से न्यायाधिकरण के समक्ष आज तक पूरा रेकार्ड प्रस्तुत नहीं किया गया है। दिनांक 05.10.98 को

विभागीय जांच को अशुद्ध घोषित किया जा चुका है। विपक्षी की ओर से कोई साक्ष्य पेश नहीं हुयी है। जांच में प्रार्थी को दस्तावेजात उपलब्ध नहीं कराये गये। जांच अधिकारी एवं विभागीय प्रतिनिधि कब नियुक्त किये गये और इसकी सूचना भी प्रार्थी को नहीं दी गयी। प्रार्थी को व्यक्तिगत सुनवाई का अवसर नहीं दिया गया। जांच प्रतिवेदन की प्रति उपलब्ध नहीं कराई गयी। प्रार्थी को दिनांक 08.01.88 को सेवापृथक कर दिया गया। जिसके विरुद्ध प्रार्थी द्वारा अभ्यावेदन दिनांक 07.09.87 को पेश किया गया। प्रार्थी द्वारा प्रस्तुत अपील, रिवीजन दोनों खारिज कर दी गयीं। विपक्षी को निर्वाह भत्ते का भुगतान नहीं किये जाने पर न्यायाधिकरण द्वारा विपक्षी के विरुद्ध दिनांक 31.7.2000 को अवार्ड पारित किया जा चुका है। विपक्षी की ओर से प्रार्थी को निर्वाह भत्ते का आज तक भुगतान नहीं किया गया। प्रार्थी द्वारा पूरी जांच में यही कथन किया गया है कि वह पढ़ा-लिखा नहीं है, वह केवल हस्ताक्षर करना ही जानता है। प्रार्थी प्रतिनिधि का कथन है कि विपक्षी द्वारा न्यायाधिकरण को रेफरेंस सुनने का क्षेत्राधिकार नहीं होने के संबंध में विपक्षी रेफरेंस को चैलेंज करते, अब इतने वर्षों बाद यह तर्क नहीं दिया जा सकता। अतः प्रार्थी को पुनः सेवा में लिये जाने तथा पिछले वेतन-भत्ते तथा सभी लाभ दिलाये जाने का अवार्ड पारित किया जावे। प्रार्थी प्रतिनिधि द्वारा अपने तर्कों के समर्थन में निम्न न्यायिक दृष्टांत पेश किये गये हैं :-

1. 1992 लेब आई सी 2391 (एस.सी.) स्टेट ऑफ पंजाब व अन्य बनाम राम सिंह
2. 2001 II एल एल जे 1721 (मद्रास) मैनेजमेंट ऑफ ऑरो फूड लि. बनाम पी.ओ.
3. (1999) 1 एस सी सी 517 नीता कप्लिश बनाम पी.ओ. लेबर कोर्ट व अन्य।
4. (1999) 1 एस सी सी 529 स्टेट ऑफ गुजरात व अन्य बनाम सूर्यकांत चुनीलाल
9. विपक्षी के विद्वान प्रतिनिधि का कथन है कि प्रार्थी श्रमिक की परिभाषा में नहीं आता है। न्यायाधिकरण को औ0वि0अधि0 1947 की धारा 7 क(1) के तहत सुनने व निर्णित करने का अधिकार नहीं है। अप्रार्थी प्रतिनिधि का तर्क है कि प्रार्थी द्वारा नियुक्ति के समय 08.11.76 के साक्ष्यांकन पत्र के कॉलम संख्या 10 में, जिसे राजपत्रित अधिकारी से सत्यापित कराकर व अपने हस्ताक्षर कर पेश की गयी थी, जिसमें प्रार्थी के

विद्यालय का नाम रा0उ0प्रा0विद्यालय अलवर गेट, अजमेर, विद्यालय में प्रवेश की दिनांक 08.09.1959, विद्यालय छोड़ने की दिनांक 02.07.1962 तथा योग्यता आठवीं पास लिखी हुयी थी। प्रार्थी के जन्मतिथि व शैक्षणिक योग्यता का सत्यापन कराने पर राज0उ0प्रा0वि0 अलवर गेट, अजमेर के प्रधानाचार्य ने अपने पत्र दिनांक 22.10.86 व 13.12.86 में स्पष्ट किया कि उक्त विद्यालय 1961 तक छठवीं कक्षा तक था तथा उसके बाद आठवीं तक में परिवर्तित किया गया। अतः श्री घीसूलाल का विद्यालय में अध्ययन करना एवं आठवीं उत्तीर्ण होना दोनों ही गलत है। प्रार्थी द्वारा नियुक्ति के लिये गलत तथ्य एवं प्रमाण पत्र दिये जाने पर आरोप पत्र जारी कर नियमानुसार विभागीय जांच करायी गयी, जिसमें आरोप सही पाये जाने पर सेवापृथक किया गया है। प्रार्थी ने जांच रिपोर्ट से भी संतुष्ट होना बताया है। प्रार्थी प्रतिनिधि द्वारा लिपिक द्वारा योग्यता भरा जाना बताया है, लेकिन यह योग्यता भी प्रार्थी के कहे जाने पर ही लिपिक द्वारा भरी होगी, इसमें लिपिक का क्या इन्टेंशन था। प्रतिनिधि का तर्क है कि खलासी के पद हेतु आठवीं कक्षा उत्तीर्ण होना आवश्यक है। प्रार्थी के आठवीं उत्तीर्ण नहीं पाये जाने पर उसे सेवापृथक किया गया है। प्रार्थी द्वारा प्रस्तुत अपील को भी सारहीन मानकर दण्ड यथावत रखा है। प्रार्थी प्रतिनिधि द्वारा अपनी याचिका में अपनी जन्मतिथि व शैक्षणिक योग्यता के प्रमाण पत्र पेश नहीं करने का कोई कारण नहीं बताया है। प्रतिनिधि का तर्क है कि प्रार्थी द्वारा निर्धारित योग्यता नहीं रखने के कारण प्रार्थी को सेवापृथक किया गया है। प्रार्थी द्वारा प्रस्तुत क्लेम खारिज किये जाने योग्य है। अप्रार्थी प्रतिनिधि द्वारा अपने तर्कों के समर्थन में निम्न न्यायिक दृष्टांत पेश किये गये हैं -

1. (2012) 8 एस सी सी 748 जैनेन्द्र सिंह बनाम स्टेट ऑफ उत्तरप्रदेश।

10. उभय पक्षों के तर्कों का मनन किया। पत्रावली का गहनता से अवलोकन व अध्ययन किया गया।

प्रार्थी श्री घीसूलाल की नियुक्ति दिनांक 01.07.76 को दिनांक 02.07.76 से रिक्त खलासी के पद के विरुद्ध अस्थायी अवजी खलासी के पद पर अस्थायी रूप से की गयी थी। प्रार्थी श्री घीसूलाल द्वारा दिनांक 02.07.76 को उक्त पद पर कार्यभार ग्रहण किया गया। दिनांक 15.02.80 के आदेश द्वारा प्रार्थी की नियुक्ति दिनांक 02.07.76 से खलासी के पद पर नियमित रूप से मानी गयी है। प्रार्थी को व्यावसायिक परीक्षा उत्तीर्ण करने पर दिनांक 15.04.80 से इलेक्ट्रोप्लेटर ग्रेड-I के पद पर एवं आदेश दिनांक 07.05.86

द्वारा इलेक्ट्रोप्लेटर के पद पर पदोन्नत किया गया है।

11. विभागीय जांच को न्यायाधिकरण के आदेश दिनांक 05.10.98 द्वारा अशुद्ध एवं अनुचित घोषित किया गया है। विपक्षी की ओर से कोई साक्ष्य पेश नहीं होने पर न्यायाधिकरण द्वारा साक्ष्य विपक्षी दिनांक 19.05.99 को बंद की गयी तथा साक्ष्य प्रार्थी में स्वयं प्रार्थी का शपथ पत्र पेश हुआ है, जिससे विपक्षी प्रतिनिधि द्वारा प्रतिपरीक्षा नहीं की गयी है। प्रार्थी घीसूलाल ने अपने शपथ पत्र में बयान किया है कि प्रार्थी द्वारा अपनी नियुक्ति के समय कभी भी स्वयं को आठवीं उत्तीर्ण नहीं बताया गया तथा उसकी नियुक्ति नाटक कोटे के आधार पर होना कथन किया है। प्रार्थी श्रमिक ने अपने बयानों में बताया है कि विपक्षी द्वारा उसकी नियुक्ति के समय बनायी गयी सर्विस शीट, व्यक्तिगत पत्रावली न्यायाधिकरण के समक्ष पेश नहीं की गयी है। विपक्षी द्वारा प्रार्थी घीसूलाल से कोई प्रतिपरीक्षा नहीं की गयी है। अतः प्रार्थी द्वारा प्रस्तुत साक्ष्य अकाट्य है।

12. विपक्षी प्रतिनिधि की ओर से यह तर्क दिया गया है कि प्रार्थी द्वारा दिनांक 08.11.76 को पेश साक्ष्यांकन प्रपत्र में अपनी जन्मतिथि 15.04.1947 तथा स्वयं को रा0उ0प्रा0विद्यालय, अलवर गेट, अजमेर से आठवीं कक्षा उत्तीर्ण होना अंकित किया है। उक्त विद्यालय से शैक्षणिक योग्यता की सत्यापन कराने पर प्रार्थी उक्त विद्यालय में अध्ययन नहीं करना तथा आठवीं उत्तीर्ण नहीं होना बताया है। मेरे विनम्र मत में किसी भी नियुक्ति के लिये पहले विज्ञापन प्रकाशित किया जाता है, उसी के उपरांत निर्धारित प्रक्रिया अपनाकर नियुक्ति प्रदान की जाती है। विपक्षी द्वारा विचारणीय प्रकरण में ऐसा कोई विज्ञापन पेश नहीं किया गया है, कि खलासी के पद पर नियुक्ति हेतु कोई विज्ञापन प्रकाशित किया गया हो। विपक्षी द्वारा खलासी के पद हेतु निर्धारित योग्यता आठवीं उत्तीर्ण होना बताया है, परन्तु विपक्षी द्वारा ऐसे कोई सेवानियम पेश नहीं किये हैं, जिनमें यह अंकित हो कि खलासी के पद की निर्धारित योग्यता आठवीं उत्तीर्ण है। अतः विपक्षी द्वारा विज्ञापन, सेवा नियम न्यायाधिकरण के समक्ष पेश नहीं करना विपक्षी के प्रति प्रतिकूल अवधारणा प्रकट करता है।

13. प्रार्थी द्वारा अपने तर्कों में अपनी नियुक्ति कल्चरल स्पोर्ट के आधार पर किया जाना बताया है, परन्तु विपक्षी द्वारा प्रार्थी की न्यायालय के आदेश के बावजूद व्यक्तिगत पत्रावली पेश नहीं की गयी, जिससे यह सिद्ध नहीं हो सकता कि प्रार्थी की नियुक्ति किस कोटे में हुयी। विपक्षी द्वारा न्यायालय आदेश के बावजूद वांछित दस्तावेजात् पेश नहीं करना विपक्षी की ओर प्रतिकूल अवधारण प्रकट करता है।

14. मेरे विनम्र मत में किसी भी नियुक्ति से पूर्व निर्धारित योग्यता संबंधी प्रमाण पत्रों का सत्यापन करने के उपरांत ही नियुक्ति प्रदान की जाती है। प्रार्थी घासूलाल को दिनांक 02.07.76 से खलासी के पद पर नियुक्ति दी गयी है और प्रार्थी द्वारा दिनांक 08.11.76 को साक्ष्यांकन प्रपत्र पेश किया गया है, जो नियुक्ति के 04 माह बाद पेश किया गया है। साक्ष्यांकन प्रपत्र के कॉलम संख्या 07 में प्रार्थी की जन्म तिथि दिनांक 15.04.1947 तथा कॉलम संख्या 10 में प्रार्थी की शैक्षणिक योग्यता आठवीं उत्तीर्ण अंकित है। प्रार्थी द्वारा नियुक्ति के समय कोई भी प्रमाण-पत्र पेश नहीं करना तथा माता-पिता के बताये अनुसार जन्म तिथि अंकित कराना बताया गया है। विपक्षी द्वारा भी ऐसा कहीं नहीं कहा गया है कि प्रार्थी ने फर्जी आठवीं उत्तीर्ण की अंकतालिका नियुक्ति के समय पेश की हो। प्रार्थी द्वारा संपूर्ण जांच में, जवाब तथा बहस में यही कहा गया है, कि वह पढ़ा-लिखा नहीं है, वह केवल हस्ताक्षर करना जानता है। साक्ष्यांकन प्रपत्र भी प्रार्थी द्वारा स्वयं भरकर पेश नहीं किया गया है, ऐसी स्थिति में इस तर्क पर विश्वास नहीं किया जा सकता कि प्रार्थी द्वारा अपनी नियुक्ति के समय अपनी शैक्षणिक योग्यता आठवीं उत्तीर्ण बतायी गयी हो। वैसे भी प्रार्थी ने अपनी भर्ती कल्चरल स्पोर्ट कोटे के तहत होना बताया है। विपक्षी द्वारा प्रार्थी की व्यक्तिगत पत्रावली और निर्धारित योग्यता आठवीं उत्तीर्ण होने बाबत कोई सेवानियम पेश किये गये है और न ही इस संबंध में कोई मौखिक साक्ष्य विपक्षी की ओर से न्यायाधिकरण के समक्ष पेश की गयी है। अतः विपक्षी प्रतिनिधि की यह आपत्ति स्वीकार की जाने योग्य नहीं है।

15. मेरे विनम्र मत में खलासी के पद हेतु किसी तकनीकी शिक्षा की आवश्यकता नहीं

होती है। उक्त पद पर कार्य की प्रकृति को भी कंसीडर करते हुये नियुक्ति प्रदान की जा सकती है। विपक्षी द्वारा प्रार्थी की सेवायें उसकी नियुक्ति दिनांक 02.07.76 से नियमित मानी गयी हैं। प्रार्थी को उसके सेवाकाल में व्यावसायिक परीक्षा उत्तीर्ण करने पर इलेक्ट्रोप्लेटर ग्रेड-I एवं इलेक्ट्रोप्लेटर ग्रेड-II के पद पर पदोन्नत किया गया है। किसी भी पदोन्नति से पूर्व उसके सेवाकाल में कोई प्रतिकूल प्रविष्टि नहीं होने एवं नियमित सेवा होने के उपरांत ही किसी कर्मचारी को पदोन्नति प्रदान की जाती है। प्रार्थी को उसके सेवाकाल में दो बाद पदोन्नति प्रदान की गयी है। जिससे यह साबित होता है कि उसकी सेवायें नियमित थीं एवं उसके सेवाकाल में कोई प्रतिकूल प्रविष्टि अंकित नहीं थी।

16. विपक्षी की ओर से प्रस्तुत न्यायिक दृष्टांत (2012) 8 एस सी सी 748 जैनेन्द्र सिंह बनाम स्टेट ऑफ उत्तरप्रदेश में माननीय सर्वोच्च न्यायालय द्वारा प्रतिपादित सिद्धांत अवैध नियुक्ति के संबंध में है, जबकि विचारणीय प्रकरण में प्रार्थी की नियुक्ति नियमित नियुक्ति है। अतः उक्त न्यायिक दृष्टांत हस्तगत प्रकरण के तथ्यों एवं परिस्थितियों से भिन्न होने के कारण हस्तगत प्रकरण में लागू नहीं होता है।

17. विपक्षी द्वारा यह आपत्ति की गयी है कि प्रार्थी श्रमिक की परिभाषा में नहीं आता है और न्यायाधिकरण को रेफरेंस सुनने व निर्णित करने का अधिकार नहीं है। इस संबंध में माननीय उच्च न्यायालय एवं सर्वोच्च न्यायालय द्वारा विभिन्न न्यायिक दृष्टांतों में यह सिद्धांतों प्रतिपादित किया गया है कि न्यायाधिकरण का क्षेत्राधिकार रेफरेंस के विवादित बिन्दु तक ही है और न्यायाधिकरण रेफरेंस से बाहर जाकर निर्णय नहीं दे सकता। अतः न्यायाधिकरण को प्राप्त रेफरेंस में विवादित बिन्दु पर ही अपना निर्णय पारित करना है। अतः विपक्षी प्रतिनिधि की उक्त आपत्ति स्वीकार की जाने योग्य नहीं है।

18. प्रार्थी प्रतिनिधि की ओर से प्रस्तुत न्यायिक दृष्टांतों में ने बारीकी से अध्योपांत विनम्रतापूर्वक अवलोकन किया। उपरोक्त सभी दृष्टांतों के तथ्य एवं परिस्थितियों हस्तगत प्रकरण के तथ्यों एवं परिस्थितियों से समानता रखते हैं, अतः उक्त सभी न्यायिक दृष्टांत प्रार्थी के केस में लागू होते हैं। जिनका प्रभाव यथोचित रूप से ऊपर विवेचना में दिया गया है।

19. उपरोक्त विवेचन के फलस्वरूप प्रकरण में निम्न अवार्ड पारित किया जाता है :-

अवार्ड

“प्रार्थी श्री घीसूलाल को विपक्षी रेलवे प्रबंधन द्वारा दिनांक 08.01.88 से सेवापृथक किया जाना अनुचित एवं अवैध है। उक्त सेवापृथक आदेश अपास्त किया जाता है। प्रार्थी श्री घीसूलाल दिनांक 08.01.88 से पुनः सेवा में आने का अधिकारी है तथा दिनांक 08.01.88 से प्रार्थी की नियमित सेवा मानी जावेगी। चूँकि प्रार्थी घीसूलाल अपनी सेवानिवृत्ति की अधिवार्षिकी आयु पूर्ण कर चुका है, अतः प्रार्थी सभी सेवानिवृत्ति लाभ-परिलाभ प्राप्त करने का अधिकारी है। दिनांक 08.01.88 से सेवानिवृत्ति दिनांक तक सभी वेतन लाभ-परिलाभ नोशनल रूप से प्रार्थी को देय होंगे लेकिन सभी सेवानिवृत्ति लाभ-परिलाभ नगद में देय होंगे।”

20. अवार्ड आज दिनांक 07.02.2014 को खुले न्यायालय में लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जावे।

हेमन्त कुमार जैन, न्यायाधीश

नई दिल्ली, 21 अक्टूबर, 2014

का.आ. 2823.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ मैसूर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बेंगलूर के पंचाट (संदर्भ संख्या 56/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 14/10/2014 को प्राप्त हुआ था।

[सं. एल-12012/129/2008-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 21st October, 2014

S.O. 2823.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 56/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of State Bank of Mysore and their workmen, received by the Central Government on 14/10/2014.

[No. L-12012/129/2008-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
YESWANTHPUR, BANGALORE**

Dated : 8th October, 2014

PRESENT : Shri S N NAVALGUND, Presiding Officer

C R No. 56/2008

I Party

Sh. R P Nagarajachar,
4th Main, 4th Cross,
Neelakanthagar, HARIHARI – 577601.
Since deceased rep. by LR's

II Party

The Regional Manager,
State Bank of Mysore,
Regional Office, 6-119,
Mandipet, DAVANGERE-577 001.

Smt. Vishalakshi,
W/o Late R P Nagarajachar,
3rd Main, 5th Cross,
Kalidasanagar,
HARIHAR – 577 601.

Appearances

I Party : Shri M Rama Rao,
Authorised Representative

II Party : Shri S K Hegde, Advocate

AWARD

1. The Central Government vide order No. L-12012/129/2008-IR(B-I) dated 04.08.2008 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

“Whether the action of the management of State Bank of Mysore, Davangere in discharging their workman Sri R P Nagarajachar, from service w.e.f. 8-2-2007, is legal and justified? If not, to what relief is the workman concerned entitled?”

2. On receipt of the reference registering it in C R 56/2008 when the notices were issued to both the sides, they entered their appearance through their respective advocates and claim statement of the I Party came to be filed on 22.09.2010, whereas, the counter statement of the II Party on 28.04.2011.

3. The I Party in his claim statement asserted that he who was appointed as Peon at Harapanahalli Branch of the II Party on 16.06.2003 was later transferred to Harihar and then to Davangere branches and that he worked sincerely and that on account of physical illness, Jaundice and Fever he applied for grant of leave alongwith medical certificates from time to time and the II Party without considering the same issued him charge sheet dated 24.03.2006 alleging unauthorised absence from 19.12.2005

to 31.03.2006 for a period of 93 days through incompetent authority and the enquiry was held without causing him notice exparte and based on such report he has been illegally discharged without paying retrenchment compensation and as the conciliation petition filed by him before ALC(C), Hubli ended with failure report the Government of India made this reference for adjudication and as he is not employed anywhere the order of discharge be set aside with direction to reinstate him with continuity of service, full backwages and other consequential benefits. INTERALIA, the II party in its counter statement without disputing that he was appointed on 16.06.2003 and was transferred from Harapanahalli to Harihar and then to Davangere branches contended that while he was working in the Davangere branch since remained absent for duty unauthorisedly from 19.12.2005 to 21.03.2006 without taking prior permission and leave at his credit the Assistant General Manager who happens to be the Disciplinary Authority issued him charge sheet on 24.03.2006 calling upon him to give explanation and as he failed to respond an order was made to conduct departmental enquiry appointing Sh. H H Ramappa as Enquiry Officer and Sh. P Sundar Raman as Presenting Officer and as the Enquiry Officer after conducting the enquiry affording all opportunities submitted his report as charge being proved the Disciplinary Authority issued him show cause notice and as he did not give any explanation and he also did not avail the opportunity provided for personal hearing he passed the order dated 08.02.2007 discharging him from service. Having regard to the allegations made in the claim statement that the enquiry was conducted exparte without causing any notice, by framing a Preliminary Issue as to

“Whether the Domestic Enquiry held against the I Party by the II party is fair and proper?”

after receiving the evidence adduced by both the sides and hearing the arguments addressed by both the sides while answering the said issue in the negative i.e., the Domestic Enquiry conducted is not fair and proper mainly on the ground that there was no material having served the notice of enquiry on the I Party by order dated 11.12.2012 the II Party was called upon to lead evidence to substantiate the charge levelled against the I Party. Then the learned advocate appearing for the II party while filing the affidavit of Sh. H R Prakash the Manager of the Davangere Branch of the relevant period of the alleged unauthorised absence reiterating the contents of the counter statement while examining him on oath as MW 1 (M) got exhibited copy of the call letter issued to the I party calling back to duty dated Nil; copy of report given by the manager to the Regional Manager reporting his unauthorized absence bearing the acknowledgement of the I party; letter by AGM to the I party dated 22.3.2006 calling for his explanation for unauthorized absence from

19.12.2005; postal acknowledgement having served the letter dated 22.03.2006 on I Party; charge sheet issued to the I party dated 24.03.2006; show cause notice issued to the I party after receipt of the enquiry finding dated 05.12.2006; the undelivered postal cover containing the show cause notice returned with shara as not claimed dated 18.12.2006; copy of the final discharge order dated 10.01.2007; undelivered postal cover containing the discharge order; copy of the discharge notice dated 08.02.2007 by AGM; Vijaya Karnataka daily dated 11.02.2007 publishing the discharge notice as Ex M-1(m) to Ex M-11(m) respectively and closed his side. Then the learned advocate appearing for the I Party reporting the death of I Party workman applying to bring his Wife as Legal Representative on record as there was no objection for the same by the II Party bringing her on record as the LR of the deceased I Party workman filing her affidavit reiterating the contents of the claim statement examining her on oath as WW 1 (M) got exhibited Photostat copy of I Party death certificate; Voter ID of I Party; heirship certificate issued by Revenue Department and Genealogy issued by Village Accountant as Ex W-1 to Ex W-4 respectively.

4. With the above pleadings, evidence brought on record when the learned advocates appearing for the parties were called upon to address arguments, the learned advocate appearing for the I Party urged that the II Party having failed to produce the attendance register to show alleged unauthorised absence the very unauthorised absence being not proved the charge be held as not proved and as the I Party workman is no more II Party be directed to pay his wife who has come on record as his legal representative the amount equivalent to the wages that he would have drawn from the date of his discharge till the date of his death. INTERALIA, the learned advocate appearing for the II party urged that as the absence for the relevant period incorporated in the charge sheet being admitted contending that he had forwarded applications for leave from time to time there is no necessity to produce the attendance register to show that he had remained absent for the said period and it was for the I Party to produce evidence that during this period he was suffering from Jaundice and fever and had sent leave applications with medical certificates from time to time but having failed to substantiate the same by producing any evidence the charge has to be held as proved and the punishment imposed discharging him from service be upheld and reference be rejected.

5. On appreciation of the pleadings, oral and documentary evidence brought on record in the light of the arguments put forward by the learned advocates, I have arrived at the conclusion that the II Party proved the deceased I Party workman having unauthorisedly remaining absent from duty from 19.12.2005 to 21.03.2006

for a period of 93 days without taking prior permission and leave at his credit and II Party is justified in imposing the punishment of discharge from service for the following

REASONS

6. As rightly urged on behalf of the II Party the I Party workman who was alive while filing the claim statement since did not dispute having remained absent for the relevant period of charge having pleaded that as he was suffering on account of physical illment, Jaundice and Fever applied for grant of leave with medical certificates from time to time and II Party without considering them issued him the charge sheet for unauthorised absence for the said period there was no necessity for the II Party to

demonstrate that he had remained absent for the relevant period by producing the attendance register and it was for the I Party workman to prove by producing relevant material/evidence that during that period he was suffering from illness like Jaundice and Fever and had sent applications for leave from time to time but no evidence in that regard being brought on record terming the absence in question as unauthorised without leave at his credit cannot for any reason be held unjustified or illegal or perverse. The wife of the deceased I Party workman who gave evidence came out with a version in the cross-examination that her husband had taken treatment as inpatient in Chigateri Hospital in Davangere for a period of three months for Backbone pain but failed to produce any medical records in that regard. Moreover, the allegation in the claim statement being that during the relevant period he was suffering from Jaundice and Fever her version that he was admitted in the Chigateri Hospital for Backbone pain suggest that he must not have been suffering from any illness. Moreover, as already adverted to by me above no material/evidence being produced having submitted leave applications with medical certificates from time to time as alleged in the claim statement the absence has to be treated as unauthorised without any leave at his credit. Therefore, I have arrived at conclusion the II Party having established the charge of unauthorised absence for 93 days from 19.12.2005 to 21.03.2006 without leave at his credit. Since there is no evidence the I Party even having sent a letter of request for grant of leave on account of his illness and even failed to give his explanation when the Disciplinary Authority issued him show cause notice and also did not avail the opportunity of hearing provided to him it suggest that he had no mind to work and continue in the job as such the Disciplinary Authority imposing the punishment of discharge from service cannot be for any reason termed as disproportionate to the proved misconduct of unauthorised absence over a period of 93 days. Hence, I arrived at conclusion that the action of the management of State Bank of Mysore, Davangere in discharging Sh. R P Nagarajachar w.e.f. 08.02.2007 is legal and justified. Under the circumstances, I pass the following

ORDER

The Reference is Rejected holding that the action of the management of State Bank of Mysore, Davangere in discharging Sh. R P Nagarajachar w.e.f. 08.02.2007 is legal and justified and that he/his LR is not entitle for any relief.

S. N. NAVALGUND, Presiding Officer